Title 12

STREETS, SIDEWALKS AND PUBLIC PLACES

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Chapter 12.01

GENERAL PROVISIONS

12.01.010 Administrative Rules Authorized. The Public Works Director, in consultation with the City Engineer, is authorized to develop and enforce Administrative Rules that implement, interpret, or prescribe city law or policy or describes city practice or procedure with respect to the subject matter found in Title 12 of the Missoula Municipal Code. Administrative Rules developed and enforced pursuant to this section must be adopted pursuant to the provisions found in Chapter 2.03, Missoula Municipal Code. (Ord. 3670, 2020)

12.01.020 Violation of Certain Provisions in Title 12 Deemed a Municipal Infraction. The penalty provided for by this Section shall not apply to Chapter 12.40, and shall not affect the penalty provided for in Chapter 12.40.080. After December 31, 2020, any violation of any provision in any other Chapter of Title 12, or any Administrative Rules implementing any provision of Title 12 adopted pursuant to Section 12.01.010 above, shall be considered a municipal infraction irrespective of any penalty stated in those Chapters.

A. Municipal infractions shall be governed by the procedures and requirements found in § 7-1-4150, § 7-1-4151, and § 7-1-4152, Montana Code Annotated, as amended.

B. The City Attorney's Office is authorized to file citations for municipal infraction of this Title in Municipal Court, and arrange to have them served in accordance with the provisions of § 7-1-4150, Montana Code Annotated.

C. If the person named in the citation is shown to have been served with the civil citation in the proper manner and, without good cause, fails to appear in response to the citation, judgment shall be entered against the person by the municipal court. (Ord. 3670, 2020)

Chapter 12.02

DEFINITIONS

Definitions. For the purposes of Title 12, the following words and phrases shall have the meanings respectively ascribed to them by this chapter:

~~"Accessible Parking Space" means any parking space that meets current minimum Americans with Disabilities Act (ADA) parking requirements.~~

~~"Accessible Route" means a pedestrian walkway that connects and provides ADA compliant access to accessible elements of a development(s), site(s) and / or structure(s) with other elements, including but not limited to accessible parking spaces to accessible entrances, accessible entrances to other accessible entrances, accessible entrances to public sidewalks, access to solid waste (garbage) collection area(s), long-term / short- term storage area(s) and postal services or mailboxes.~~

"Alley" or "Alley approach" means any subordinate right-of-way between the connected street(s) used to access private or public property.

~~"Alley Approach Improvements" means any millings, asphalt, concrete or other dust control improvements along any length of an alley.~~

"Approach" means the area from the edge of street or alley to the property line or edge of public access easement which is intended to provide access for vehicles to a parking facility. Component parts of a "approach" include and are referred to as the "curb cut" (laydown), the "apron" and the "sidewalk section".

"Apron" means that portion of the approach extending from the back of curb to the property line excluding the sidewalk.

~~"Bonded Right-of-Way Contractor" shall mean any person(s), company(ies), corporation(s) who has filed the proper bond, paid necessary fee(s), and has obtained a bonded right-of-way contractor license from City of Missoula Development Services. Only bonded right-of-way contractors shall perform construction or repair right-of-way improvements (sidewalks, curb/gutter, paving, etc).~~

"Boulevard" means an area of right-of-way between the edge of the street, whether curbed or not, and the private property line.

~~"Boulevard sidewalk" means sidewalks located so as to create a boulevard between the curb/gutter or edge of the paved street and the sidewalk.~~

~~"Boulevard Tree" means any tree which exists in an area of right-of-way between the edges of the street, whether curbed or not, and the adjacent private property line; within a public easement; or more than one-half of the tree trunk at ground level is within the right-of-way.~~

"Construction" generally means and is synonymous with install, installation, reconstruct, reconstruction, remove and/or replace, and repair.

"Curb Cut" means the portion of curb at the "approach" or "alley approach" constructed so as to facilitate the passage of vehicles to/from the street to private property. (may also be referred to as a "laydown")

"Director" means the Public Works Director or their designee.

"Driveway" means an area on private property where motorized and/or non-motorized vehicles are operated or allows access between a parking facility and a street.

“Parking Facility” means an area where vehicles are allowed to be parked or stored and includes pads, carports, garages, parking lots, or structures.

“Paved” means surface treatment consisting of asphalt, concrete or other City Engineer approved hard surface material including the appropriate subsurface materials.

~~“Paving Construction Work” includes parking facilities, driveway, approach, street, alley and alley approach whether upon and / or within private property, right-of-way, or public easement, that is required to be performed as a result of the Paving Permit, Building Permit, or Zoning Compliance Permit process or to comply with any other Federal, State or Local Law.~~

~~“Pedestrian Connection" or "Cross-connection” means a pedestrian walkway that connects structures (on and off site), parking facilities (on and off site) and / or existing or future pedestrian facilities in the right of way or public access easement. Alleys are not considered pedestrian connections unless designed and constructed as such.~~

~~"Private Street" means a street owned and maintained by an individual(s), organization(s) or company(ies) that has not been accepted for ownership or maintenance by the City of Missoula or does not comply with Missoula City Public Work Standards and Specifications. Private street maintenance shall be covered in covenants or maintenance agreements.~~

~~"Property Frontage" means the boundary / property line of a parcel that abuts a street and/or other right-of-way.~~

“Public Access Easement” is an easement for public benefit and use. Public access easements may contain streets, curb/gutter, sidewalks, trails and other related features (these may also be designated as: public easement, public sidewalk easement, public right-of-way easement, public non-motorized easement, etc.) Public access easements shall be subject to the same specifications, fees, inspections and requirements as right-of-way.

“Repair” typically includes activities such as grinding, saw-cutting, crack sealing, mud-jacking, etc.

“Residential Dwelling” is a structure providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. The intent is to be consistent with the building code and zoning code.

“Right-of-Way” or “ROW” means land, property and / or any interest in land or property and is generally acquired, dedicated and devoted to public use.

“Right-of-Way Encroachment” shall mean any activity/object and/or obstacle occurring/placed/constructed/located upon/over/within the right-of-way or public access easement and that is owned/possessed/controlled by an entity other than a governmental body or a public utility. A right-of-way encroachment is semi-permanent in nature with a duration exceeding thirty-six (36) months/three (3) years.

“Right-of-way improvement(s)” or “ROW improvement(s) or “Public Infrastructure improvements” includes all construction work in the right-of-way and/or public easement(s). Improvements include, but are not limited to; all materials, equipment and labor to install or repair curb/gutter, sidewalk, road/street/alley paving, grading, drainage structures, bridges (vehicular and pedestrian), railings, retaining walls, boulevard or median improvements, approaches, alley approaches, curb ramps, landscaping, boulevard trees, street lighting, traffic management signs, traffic signals, curb and pavement markings, traffic management structures, and utilities.

“Right-of-Way Occupancy” shall mean any activity/object and/or obstacle occurring/placed/constructed/located upon/over/within the right-of-way or public access easement that impedes free and safe movement of vehicular, bicycle, pedestrian travel, etc., and/or access or parking. A right-of-way occupancy is temporary in nature with a maximum duration of thirty-six (36) months/three (3) years or less.

"Sidewalk Section" in regards to approaches; means the portion of an approach lying between the apron and the driveway, within right-of-way or public access easement visually and functionally serving as the public sidewalk.

"Snow Storage Area" means a designated or specified area within private property that is reserved for the storage or stockpiling of accumulated snowfall (snow), occurring and accumulated within private property, when plowed, shoveled or removed from hardscape areas, including but not limited to driveways, parking lots, parking garages, and pedestrian facilities (sidewalks, trails, pathways, etc.). Snow storage areas shall address the seasonal storage and management of accumulated snowfall (snow). Only snowfall (snow) occurring and accumulated upon / within the public right-of-way may be plowed or shoveled and stored within the right-of-way.

"Stacked Parking" means the parking of one vehicle directly behind another where the second vehicle blocks access to the street, alley, drive aisle, etcetera of the first vehicle.

"Traffic Control Plan" shall mean a plan for the safe management and passage of motor vehicles, bicyclists, pedestrians, etc., as well as workers, equipment and materials. Traffic control plans shall be submitted, reviewed and approved by the City Engineer or designee prior to use of the right-of-way or public access easement whether a right-of-way occupancy permit is required or not. Traffic control plans shall comply with the current revision/version of the Manual on Uniform Traffic Control Devices (MUTCD), Montana Department of Transportation (MDT), Americans with Disabilities Act (ADA), and the Missoula City Public Works Standards and Specifications.

Acronyms/References.
"ACI" = American Concrete Institute
"ADA" = Americans with Disabilities Act
"MCA" = Montana Code Annotated
"Missoula City-County Air Pollution Program"
"Missoula City Subdivision Standards"
"Missoula City Zoning Ordinance"
"MCPWSS" = Missoula City Public Works Standards and Specifications Manual
"COMSSM" = City of Missoula Standards and Specifications Manual
"MMC" = Missoula Municipal Code
"MPRDM" = Missoula Parks and Recreation Design Manual
"MPWSS" = Montana Public Works Standard Specifications
"MUTCD" = Manual on Uniform Traffic Control Devices
(Ord. 3709, 2023; Ord. 3670, 2020)

Chapter 12.04

STREET VACATION

Sections:

12.04.010 Purpose of this chapter.
12.04.020 Payment of cost of right-of-way petition process for vacations and closures.
12.04.030 Procedures for right-of-way vacations and closures.
12.04.040 Limitation on refiling rejected petition to discontinue any street or alley.

12.04.010 Purpose of this chapter. The purpose of this chapter is to provide a uniform policy for, as well as establish, administrative procedures for the petitioning and review of proposed vacations and closures of dedicated public right-of-way. Public right-of-ways were dedicated to the public by private property owners to be held in public trust for the benefit and use of the public. There may be good reason for returning a dedicated right-of-way to private ownership or for altering or closing a public right-of-way to public use. Right-of-way vacation allows the city to relinquish all legal interest in and authority to use or manage the right-of-way on behalf of the community and may place the property onto the property tax rolls. The vacated right-of-way may revert to private property ownership in equal portions or to the property from which the right-of-way was originally taken. The private property owner then assumes payment of the taxes, liability, and maintenance on the vacated right-of-way. Right-of-way closure or discontinuance might not be permanent in nature. Discontinuance or closure of right-of-way allows the city to retain all authority to use, manage or reopen the public right-of-way on behalf of the public. However, by discontinuing or closing the right-of-way, the city may allow temporary usage of it by the adjacent private property owners in equal portions or simply close and alter the use of it. The City may apply a term limiting the length of the closure, and may require that no permanent structures be built upon the dedicated public right-of-way, may require the private user of the closed right-of-way take liability for the condition and any incidents occurring on the right-of-way, and the City may charge an annual usage fee for private usage of the right-of-way.

Commented [SR2]: Moved to UDC Chapter 6.2.9

The vacation or closure of dedicated public right-of-ways remove and/or limit the benefits they were intended to provide. This ordinance requires the evaluation of those lost benefits and the alternative private and public good that may be provided or required with the vacations and/or closures prior to action by the city council. The administrative procedures for vacations and closures may include a survey of city staff and local utilities, a public hearing as required by Section 7-14-4114 of the Montana Code Annotated, and may take from 70 to 90 calendar days to complete. (Ord. 2997, 1996; Prior code §28-13.2).

12.04.020 Payment of cost of right-of-way petition process for vacations and closures. At the time any petition is submitted by property owners for the vacation and closure of any public right-of-way within the city, the petitioning property owners shall also pay a fee to the city treasurer for the purpose of defraying the necessary costs of title searches and public notice publications. The fee shall be established and/or amended by City Council resolution after a public hearing has been conducted. The money so received shall be deposited by the city treasurer in the appropriate City fund, provided, however, where an amended plat or replatting is required in accordance with the laws of the state, and such amended plat or replatting requires or requests any right-of-way to be vacated and/or closed, that has been originally established by the prior official subdivision plat, all costs associated with the preparation and review of the amended plat or replatting shall be the obligation of the petitioner for such amended plat or replatting. (Ord. 3526, 2014; Ord. 3501 §1, 2013; Ord. 3476 §2, 2012; Ord. 3462 §2, 2011; Ord. 3433 §2, 2010; Ord. 3384 §2, 2008; Ord. 3350 §2, 2007; Ord. 3323 §2, 2006; Ord. 3298 §1, 2005 Ord. 3259 §1, 2004; Ord. 3227, 2003; Ord. 2997, 1996; Prior code §28-13.1).

12.04.030 Procedures for right-of-way vacations and closures. The city will adopt procedures for processing property owner requests for vacating or closing public right-of-way. The procedures will include and provide for the needs or issues identified within this section.

A. When any request to vacate or close any public right-of-way is made, the initiator of the request to vacate or close any right-of-way is responsible for contacting all property owners adjacent to the proposed right-of-way vacation or closure to solicit their signatures upon the petition; and must provide the reasons for the lack of any property owner's signature on the petition for the vacation or closure.

B. The initiator of the request to vacate or close any right-of-way must provide the city council with an information package containing:

1. a site-specific evaluation of the reasons for the proposed public right-of-way vacation or closure;

2. a statement of the intended usage of the public right-of-way if the vacation or closure is approved, including a site plan;

3. a description of the intended goals for the usage of the proposed public right-of-way vacation or closure, a review of the existing utilities occupying any portion of the proposed public right-of-way vacation area;

4. an evaluation of any other available alternatives other than vacating or closing the public right-of-way, including, but not limited to, zoning variances, adjacent land use, design modifications, and/or a partial right-of-way vacation or closure;

5. research of the potential tax impact to the property taxes of each of the properties adjacent to the right-of-way proposed for vacation;

6. and a description of the site specific benefits the property owners adjacent to the proposed right-of-way vacation or closure are willing to consider providing in return for the approval of the vacation or closure including benefits to the affected property owners, the neighborhood and the community, and also including consideration of, but not limited to, any public improvements, easements, walkways, bicycle paths, rededication of public right-of-way, buy-back options and future usage rights as requested under any survey of city staff and local public utility agencies.

C. All requests to close public right-of-way shall include a term limiting the amount of time the public right-of-way will be closed to public usage, setting a specific date for the reopening of the public right-of-way which shall be suitable to the usage planned by the property owners for the public right-of-way proposed for closure, and may include the assessment of a negotiated annual fee for private usage of the closed right-of-way for the term of the closure. The property owner will be responsible for any of the structures installed within the closed public right-of-way and for maintaining the structures in a safe condition during the term of the closure. The private property owner using the closed public right-of-way for a commercial use may be required

by the city to maintain or extend a liability insurance policy which covers activities and incidents taking place during the term of the private usage of the closed right-of-way. (Ord. 2997, 1996)

12.04.040 Limitation on refiling rejected petition to discontinue any street or alley. When the city council acts adversely upon a petition to discontinue any street or alley within the city under the provisions of MCA Sections 7-14-2616 (1) (2) and (3), 7-14-2617, 7-14-4114 (1) (2) and (3), and 7-14-4115, no further petition to discontinue such street or alley will be considered by the city council until the expiration date of one year. (Ord. 2997, 1996)

Chapter 12.08

BONDED CONTRACTORS

BONDED RIGHT-OF-WAY CONTRACTORS

Sections:

12.08.003 Authority.
12.08.005 Purpose.
12.08.007 Applicability.
12.08.009 Conflicting Provisions.
12.08.010 Definitions.
12.08.020 Bonded Right-of-Way Contractors -- License Requirement.
12.08.030 Bonded Right-of-Way Contractors -- License Bond Required.
12.08.040 Bonded Right-of-Way Contractors -- License Suspension Grounds.
12.08.050 Bonded Right-of-Way Contractors -- License Suspension Report to City Council.
12.08.060 Bonded Right-of-Way Contractors -- Liability Upon Bond, Time Limit.

Section 1

12.08.003 Authority.
This ordinance is adopted pursuant to the powers granted and limitations imposed by Montana state law and the City of Missoula's home-rule authority. (reference Montana Code Annotated Title 7 Chapter 12 Part 41, Title 7 Chapter 14 Part 41 and MCA 60-1-103) (Ord. 3552, 2015).

Section 2

12.08.005 Purpose.
This ordinance is adopted for the purpose of setting forth licensure and bonding requirements for work performed within/upon the public right-of-way and/or public access easements. (Ord. 3552, 2015).

Section 3

12.08.007 Applicability.
This code shall apply to right-of-way improvements within/upon public right-of-way and/or public easements within the City of Missoula as performed by bonded right-of-way contractors. (Ord. 3552, 2015).

Section 4

12.08.009 Conflicting Provisions.
If the provisions of this ordinance conflicts with other provisions or regulations of federal, state or local government, then the most restrictive requirement(s) shall apply to the extent permitted by law. (Ord. 3552, 2015).

Section 5

12 08.010 Definitions.

A. "Bonded Right-of-Way Contractor," shall mean person(s), company(ies), corporation(s) performing construction or repair of right-of-way improvements (sidewalks, curb/gutter, paving) within/upon the public right-way. Bonded right-of-way contractor shall mean any person(s), company(ies), corporation(s) who has filed the proper bond,

Commented [SR3]: Moved to MMC 5.04.010

paid necessary fee(s), and has obtained a license as a bonded right-of-way contractor from City of Missoula Development Services.

B. "Construction" as used in this chapter shall mean install, installation, construct, construction, reconstruct, reconstruction, repair, remove and/or replace.

C. "Paving Construction Work" shall mean construction and/or repair of parking facilities, driveway approach/apron, roadway/street, alley/alley approach, and refers to any asphaltic or cementitious concreting work, or approved alternative surface, whether upon and/or within public right-of-way or public access easement, that is required to be performed as a result of the building permit process, zoning compliance permit process, a City construction/repair project or to comply with any other federal, state or local law or code.

D. "Public Access Easement" shall mean an easement to/for public benefit and use. Public access easements may contain roadways/streets, curb/gutter, sidewalks, trails and other related features (these may also be designated as, but not limited to public sidewalk easement, public right-of-way easement, public roadway/street easement). Public access easements shall be subject to the same specifications, fees, inspections and requirements as public right-of-way.

E. "Repair" shall mean to reconstruct/reconstruction, repair, remove and/or replace. Repair may include, but is not limited to activities such as; grinding, cutting/sawing, sealing, mud-jacking, etcetera.

F. "Right-of-Way Improvements" shall mean all construction work upon/within a public right-of-way and/or public access easement. Construction work may include, but is not limited to; all materials, equipment and labor to install or repair curb/gutter, sidewalk, roadway/street, alley/alley approach paving, grading, bridges (vehicular and/or pedestrian), driveway approaches/aprons, alley approaches, curb ramp repairs and/or replacements and other appurtenances related to their construction and/or maintenance, which are located upon/within the limits of said right-of-way improvements work. Right-of-way improvements shall include paving construction work as defined herein. (Ord. 3552, 2015; Ord. 3244, 2004; Ord. 2043 §22, 1979: prior code §28-94).

Section 6

12.08.020 Bonded Right-of-Way Contractor – License Requirement.

It is unlawful for any person to engage in the business of construction and/or repair of any right-of-way improvements in any combination thereof upon any public right-of-way and/or public access easement within the City of Missoula unless the person bonded right-of-way contractor is the holder of a valid, unsuspended license as a bonded right-of-way contractor. (Ord. 3552, 2015; Ord. 3244, 2004; Ord. 2043 §23, 1979; prior code §28-95).

Commented [SR4]: Moved to MMC 5.08.140

Section 7

Commented [SR5]: Moved to MMC 5.08.140.A

12.08.030 Bonded Right-of-Way Contractor – License Bond.

A. At the time of making application for a City business license as a bonded right-of-way contractor, the applicant shall file with City of Missoula Development Services evidence of liability insurance as required by Section 5.08.150 and a surety bond in the amount of ten thousand dollars ($10,000.00).

B. The bond provided for in this section shall run to the City of Missoula and shall be signed by a bonding company authorized to transact business in the State of Montana. The bond shall be conditioned, so as to save harmless the City of Missoula and all persons for whom right-of-way improvements shall be constructed and/or repaired, by the bonded right-of-way contractor, for a period of two (2) years from the date of final inspection and acceptance by the City Engineer. This bond shall be in effect for problems resulting from defective/faulty materials and/or workmanship.

(Ord. 3552, 2015; Ord. 3244, 2004;Ord. 2043 §24, 1979: Ord. 1895, 1978; prior code §20-96).

Section 8

12.08.040 Contractor – License Suspension Grounds.

The City Engineer may suspend the business license of any contractor who shall perform any work within/upon the public right-of-way in manner or form other than that permitted by the City Engineer, or who shall deviate from City Public Works and Mobility Standard Drawings and/or Missoula Public Works Standards and Specifications available at the City of Missoula Engineering, or who shall perform any work without first obtaining from the City Engineer the proper reviewed and approved construction plans, or who shall fail, neglect or refuse to comply with any of the other provisions in this chapter. It shall be unlawful for any contractor to engage in the business of performing any work within/upon the public right-of-way while such license shall remain suspended. (Ord. 3552, 2015; Ord. 3492, 2013; Ord. 3244, 2004;Ord. 2043 §25, 1979; prior code §20-97) .

Commented [SR6]: Moved to MMC 5.08.170

Section 9

12.08.050 Contractor – License Suspension Report to City Council.
Upon the license of any contractor being suspended by the City Engineer, the City Engineer shall report the suspension in writing to the City Council at its next regular meeting, together with the reasons for suspension. The City Council may either revoke the license, withdraw the suspension or affirm the license suspension for a certain period of time. If the license is revoked or suspended by the City Council, it shall thereafter be unlawful for the contractor to engage in the business of performing any work within/upon the public right-of-way. (Ord. 3552, 2015; Ord. 3492, 2013; Ord. 3244, 2004; Ord. 2043 §26, 1979; prior code §20-98)

Commented [SR7]: Moved to MMC 5.08.170

Section 10

12.08.060 Bonded Right-of-Way Contractor -- Liability Upon Bond, Time Limit.
Actions may be maintained upon the bond by either the City or by any person who shall suffer any loss or damage by reason or on account of any right-of-way improvements constructed or repaired by a bonded right-of-way contractor, becoming unsafe or defective within two (2) years from the date of the construction and/or repair of right-of-way Improvements on account of materials used therein or workmanship thereon. (Ord. 3552, 2015; Ord. 3244, 2004; Ord. 2043 §27, 1979; prior code §20-100).

Commented [SR8]: Moved to MMC 5.08.140.B

Chapter 12.10

RIGHT-OF-WAY IMPROVEMENTS

12.10.010 Authority
12.10.020 Purpose
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12.10.050 Right-of-Way Improvements Permit – Required
12.10.060 Permit Fees for Right-of-Way Improvements
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12.10.080 Investigation Fee – Work Without a Permit
12.10.090 Construction Specifications for Right-of-Way Improvements – Material Requirements
12.10.100 Right-of-Way Improvements Shall Only be Performed by a City Licensed and Bonded Contractor
12.10.110 Requirements for Right-of-Way Improvements
12.10.120 Construction Locations for City Sidewalks
12.10.130 Postponement of Required Right-of-Way Improvements
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12.10.150 Right-of-Way/ Public Easement Paving Construction Work -- Application, Approval, and Permit Required
12.10.160 Right-of-Way/Public Easement Paving Construction Work -- Standards Compliance Required
12.10.170 Approaches onto Right-of-Way – Approval
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12.10.200 Rights-of-Way – Vehicles to be Parked within Private Property Lines
12.10.210 Condemnation by City Engineer
12.10.220 Defective Sidewalks – Failure of Owner to Repair
12.10.230 City Council to Order Construction and/or Repair
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12.10.250 Notice – Service
12.10.260 Notice – Service by Publication
12.10.270 Notice – Contents
12.10.280 Notice – To Contain Statement as to Noncompliance
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12.10.300 Construction by City – After Noncompliance with Notice
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12.10.320 Payment to be Made by City Check
12.10.330 Assessment for Construction – When Work Completed by City Contractor
12.10.340 Assessment for Construction – When Work Completed by Private Contractor
12.10.350 Assessment for Construction – May be Paid in Full
12.10.360 Assessment for Construction – Payable in Installments

12.10.010 Authority.

This ordinance is adopted pursuant to the powers granted and limitations imposed by Montana state law; Montana Code Annotated (MCA) and the City of Missoula's self-governing power. (reference MCA 7-14-41, MCA 7-15-41 and MCA 60-1-103) (Ord. 3670, 2020)

12.10.020 Purpose.

Commented [SR9]: Moved to UDC Chapter 6.1.1

This ordinance is adopted for the purpose of setting forth design, construction and inspection requirements for Right-of-Way Improvements. Right-of-Way Improvements are necessary to promote public safety, create facilities and systems for public use, allow efficient and effective movement of people and goods, and seeks to improve quality of life, mobility and access through the physical improvements. (Ord. 3709, 2023; Ord. 3670, 2020)

12.10.030 Applicability.

Commented [SR10]: Moved to UDC Chapter 6.1.2

This code shall apply to rights-of-way, public easements and private property within the City of Missoula and shall define and regulate the design, construction and inspection requirements for right-of-way Improvements as defined in this ordinance, including but not limited to installation / construction / reconstruction / repair / removal / replacement of curb/gutter, sidewalk, street / alley paving, grading, drainage structures and appurtenances, bridges (vehicular and/or pedestrian), railings, retaining walls, boulevard and/or median improvements, approaches/aprons, alley approaches, curb ramps, landscaping, boulevard trees, street lighting, traffic management signage, traffic signals, curb and pavement marking, traffic management structures and utility connections, repairs, or replacements and other appurtenances related to their construction when/where required by Missoula Municipal Code (MMC). (Ord. 3670, 2020)

12.10.040 Conflicting Provisions.

If the provisions of this section conflict with other provisions or regulations of federal, state or local government, then the most restrictive requirement(s) shall apply to the extent permitted by law. (Ord. 3670, 2020)

12.10.050 Right-of-Way Improvements Permit – Required.

Commented [SR11]: Moved to UDC Chapter 6.2.1.F

Right-of-way improvements shall be performed only after first obtaining the appropriate permit from the City and paying the necessary permit fees found in the Public Works and Mobility Fee Schedule. These permits shall expire after one hundred-eighty (180) days unless an inspection is conducted or an extension is requested by the permittee and granted by the Director. In addition, all work associated with pruning planting, or removing of a boulevard tree requires a Tree Permit from Parks and Recreation. (Ord. 3670, 2020)

12.10.060 Permit Fees for Right-of-Way Improvements.

Commented [SR12]: Moved to UDC Chapter 6.2.1.F

The City Council shall establish and amend fees for the following services by resolution after conducting a public hearing.

A. Inspecting right-of-way improvements related to curb and gutter construction.
B. Inspecting right-of-way improvements related to sidewalk and approach construction.
C. Boulevard tree planting or removal through Parks and Recreation.
D. Inspecting other repair work on curb and gutter, sidewalk and approach; grinding, saw cutting, crack sealing and other concrete work that does not require complete removal and replacement.
E. Inspecting areas of street or alley paving construction work within/upon the right-of-way, including striping. (Note: when both private and right-of-way paving permits are required, only a right-of-way paving permit will be issued and the higher of the two permit fees from the Public Works and Mobility Fee Schedules will be applied.)
F. Right-of-way/paving project administration and management on city-initiated projects.

The fee for Public Works and Mobility staff to review subdivision plan submittals for compliance with applicable codes shall be collected when the subdivision plan is submitted. The fee for Public Works and Mobility staff to review building construction site plans for compliance with applicable codes shall be collected prior to the issuance of the building permit. (Ord. 3709, 2023; Ord. 3670, 2020)

12.10.070 Permit Fee Refunds.

Commented [SR13]: Moved to UDC Chapter 6.2.1.F

Refund of permit fees shall be given when permit errors or mistakes are caused by the City. Refunds shall be approved by the Public Works Director. (Ord. 3709, 2023; Ord. 3670, 2020)

12.10.080 Investigation Fee – Work Without a Permit.

Whenever any work for which a right-of-way Improvements or paving construction work permit is required by this ordinance has been commenced prior to obtaining a permit, an investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this ordinance and paid before any permit is issued. The payment of such investigation fee shall not exempt any person from compliance with all provisions of this ordinance. In addition to the investigation fee the Public Works Director may require additional mitigation including but not limited to removal of the concrete and/or pavement. The Public Works Director may grant relief from the investigation fee upon written request from the contractor. (Ord. 3709, 2023; Ord. 3670, 2020)

Commented [SR14]: Moved to UDC Chapter 6.2.1.F

12.10.090 Construction Specifications for Right-of-Way Improvements – Material Requirements.

All specifications for materials and procedures used in the construction of right-of-way improvements shall meet or exceed the standards set forth in the Missoula City Public Works Standards and Specifications Manual. (Ord. 3670, 2020)

Commented [SR15]: Moved to UDC Chapter 6.2.1.D

12.10.100 Right-of-Way Improvements Shall Only be Performed by a City Licensed and Bonded Contractor.

Only City licensed and bonded contractors, in accordance with MMC Chapter 12.08, shall construct any right-of-way improvements in any existing or proposed right-of-way, or other property owned by or dedicated to or used by the City. All licensed and bonded contractors' concrete placing/finishing crews shall have at least one American Concrete Institute (ACI) Certified Flatwork Finisher level or above on site at all times.
In addition, all boulevard tree work shall comply with Chapter 12.32. (Ord. 3670, 2020)

Commented [SR16]: Moved to UDC Chapter 6.2.1.F

12.10.110 Requirements for Right-of-Way Improvements.

The City Engineer shall require right-of-way improvements to be shown on all site plans required for the issuance of the appropriate permit; and further, shall require right-of-way improvements to be installed prior to the issuance of a permanent certificate of occupancy. The location and construction specifications of right-of-way improvements shall be approved by the City Engineer, who shall also be responsible for reviewing and inspecting the construction of all improvements constructed within/upon right-of-way. Right-of-way improvements may be postponed upon approval of the Director, or Director's designee. The criteria for applying for a postponement are listed in 12.10.130 below.

Commented [SR17]: Moved to UDC Chapter 6.2.1

A. Right-of-way improvements shall be installed where none currently exist for the following:

1. New construction of residential dwelling, commercial, and/or industrial building, excluding accessory dwelling units.
2. Additions or changes to existing structures that will cause an increase in the required parking.
3. Where new construction or additions to parking facilities occur, excluding single and two-family residential carports and garages.

B. Existing hazardous and/or deteriorated right-of-way improvements, as determined by the City Engineer, shall be replaced/repaired or otherwise upgraded to present standards for the following:

1. New construction of residential dwelling, commercial, and/or industrial building, excluding accessory dwelling units
2. When the footprint of a residential dwelling, commercial, and/or industrial building is increased by 200 square feet or more.
3. Where new approaches accessing city streets are constructed.

C. Non-ADA compliant right-of-way improvements directly adjacent to the permitted on-site construction, as determined by the City Engineer, shall be replaced/repaired or otherwise upgraded to present Americans With Disabilities Act (ADA)requirements.

D. Private Street Required. At the discretion of the City Engineer, an access that serves as the primary fire access route requires a private street and may include concrete curb/gutter, concrete sidewalks and stormwater drainage /management, shall be designed and constructed in accordance with the Missoula City Public Works Standards and Specifications Manual as reviewed and approved by the City Engineer. Private street paving construction work shall be completed along the entire length of a private street starting at the existing adjacent intersecting street.

E. All streets shall have curbing and sidewalk on both sides unless otherwise approved by the City Engineer. Homezones/woonerfs may be considered as a design alternative for developments.

F. Street names for developments:

a. New streets that align with existing streets must have the same name as the existing street.

b. Street names for non-continuing streets may not duplicate nor be named so as to be confused with existing street names.

c. Street names shall be approved by City GIS Division.

G. Alleys must meet the following standards:

a. When right-of-way improvements are required under this Chapter, and vehicular access to the public street system is from the alley, the alley shall be controlled for dust (asphalt millings recommended) along the extents of the property frontage of the alley to the nearest intersecting street. If four or more parking spaces are proposed off the alley, the entire length of the alley to intersecting streets shall be controlled for dust.

b. All alleys in the Central Business District shall be paved with concrete.

c. All alleys shall be designed and constructed to the Missoula City Public Works Standard and Specifications Manual.

d. In areas where development patterns include alleys the developer is required to continue the circulation pattern inclusive of alley construction unless topographic constraints exist.

e. Alleys must not dead end.

H. Connectivity Requirements. New or proposed developments shall be reviewed by the City Engineer for the purpose of establishing connectivity. Issues to be considered with this review include the safety and wellbeing of the residents of the development and their access to a sound multimodal transportation system as well as the ability to move about within the development and access adjacent destinations.

New or proposed developments should also meet the applicable goals and policies of any relevant community plans including, but not limited to the following: Long Range Transportation Plan, Active Transportation Plan, Our Missoula Growth Policy, the Pedestrian Facilities Master Plan, The Bicycle Facilities Master Plan, and the Master Parks and Recreation Plan for the Greater Missoula Area.

During Review, the City Engineer may require the following:

a. Street connections, which can include one or more of the following:

i. Continue existing or planned street patterns adjacent to the Development.

ii. Connect internal private streets to adjacent public or private streets.

b. Internal connections in compliance with the requirements of Chapter 12.17.

c. That connections be located within a right-of-way or public access easement.

I. Exceptions to these standards: The Director or the City Engineer may grant deviations from these standards if there is documentation provided by the developer that justifies the requested changes.

J. Failure to meet the above requirements shall be considered a violation of this Chapter.

K. Property owners may finance the costs of right-of-way improvements adjacent to their property pursuant to this Chapter, payable in installments extending over a period of eight, twelve, or twenty years as specified by the property. If the property owner does not specify the number of years, the default term shall be twenty years. (Ord. 3709, 2023; Ord. 3670, 2020)

12.10.120 Construction Locations for City Sidewalks.

Commented [SR18]: Moved to UDC Chapter 6.2.5.A

A. All new sidewalks within the right-of-way shall be boulevard sidewalks. The Director may approve a deviation from this requirement if it is determined that one of the following criteria is met:

1. The installation of a boulevard sidewalk would significantly impact healthy mature trees, on the approved tree list or as approved by the City of Missoula Urban Forester or their designee, located in or adjacent to the right-of-way.
2. The topography would make the installation of boulevard sidewalks unusually expensive.
3. Other features, including but not limited to; irrigation ditches, utility poles, traffic calming, etc.., that prevent installation of boulevard sidewalks.

B. The following shall not be used as criteria for waiver of the boulevard sidewalk requirement:

1. Existing fences or private structures encroaching into the right-of-way.
2. Existing landscaping and underground irrigation, other than healthy mature trees.
3. Existing sidewalk locations adjacent to the proposed sidewalk. (Ord. 3670, 2020)

12.10.130 Postponement of Required Right-of-Way Improvements.

Commented [SR19]: Moved to UDC Chapter 6.2.6

A. A postponement request shall be made to the Director, or Director's Designee, in writing providing reasons for the requested postponement. Single family or duplex residential units or lots are eligible for right of way improvement postponements. Note: Three or more residential units or lots on the same block, or any commercial or industrial lots will not be eligible for a postponement.

B. The Director, or Director's Designee, may approve postponement of the requirement for right-of-way improvements when any one of the following criteria is met:

1. The improvements do not provide immediate public benefit, including, but not limited to, connection to other public infrastructure, safety, not located on a priority sidewalk and/or bicycle corridor, protection of existing infrastructure, or protection of the natural environment.

2. The ultimate alignment and grade of the street has not been established by physical, on the ground, improvements or preliminary engineering plans. However, properties with large frontage, high pedestrian need, drainage concerns, or parking and access control problems may be required to establish street alignment and construct right-of-way improvements.

3. Adverse conditions exist that prevent cost-effective construction of improvements including, but not limited to, lack of available right-of-way, adverse topography, major utility conflicts, or irrigation ditches. Existing landscaping, existing fences, or lack of existing sidewalks are not considered adverse conditions.
4. A City initiated right-of-way improvements construction project adjacent to the property is planned to be completed as identified within the current five (5) year Community Investment Program (CIP).
5. The cost of the right-of-way improvements for an existing building remodel exceeds 20% of the total project cost, subject to review and approval of cost estimates by the City Engineer.

C. The need for temporary pedestrian facilities may be required if the conditions in this chapter have resulted in a postponement of right-of-way improvements. A corridor for future ROW improvements must be maintained. The plans for temporary pedestrian facilities, if required, as well as plans for landscaping and grading in the right-of-way shall be approved by the Director, or Director's designee prior to construction.

D. Sidewalks and other ROW improvements deferred pursuant to subsection (A) of this section, may be initiated at any time by resolution of the City Council. (Ord. 3765, 2025; Ord. 3709, 2023; Ord. 3670, 2020)

12.10.135 Latecomer's agreements for privately financed right-of-way improvements.

Commented [SR20]: Moved to UDC Chapter 6.2.7

A. Property owners or Developers ("Developers") may contract to install right-of-way improvements within rights-of-way or public access easements at their own expense after obtaining applicable approval from the city, and where applicable state authorities, and obtaining applicable permits. Any such public surface infrastructure improvements ("Improvements") must be installed in conformance with the regulations and rules of both city and state and under the direction of the City Engineer.

B. Upon request from the Developer installing the Improvements ("the Sponsor"), a Latecomer's Agreement may be created between the City and the Sponsor through which other developers directly benefitting from the Improvements pay the Sponsor a proportionate share of the total cost of the Improvements. Latecomer's Agreements are intended for situations in which the Improvements are intended to serve a finite number of properties. The City Engineer has the discretion to determine if a Latecomer's Agreement is appropriate.

C. The Director of Public Works and Mobility is authorized to adopt administrative rules addressing eligible projects, the process, deadlines, methodology, reimbursable costs, repayment procedure, and any other provisions necessary to administer these Latecomer's Agreements.

D. Any Latecomer's Agreement that is developed pursuant to these adopted rules will require City Council approval.

E. Owners of any properties subject to a Latecomer's Agreement shall be provided a copy of the Latecomer's Agreement in writing.

F. An executed Latecomer's Agreement shall remain in effect for ten (10) years after the date the Latecomer's Agreement is executed. Upon approval by City Council the timeframe can be extended up to 20 years for projects with extraordinary circumstances. Developers connecting to the Improvements shall pay a 5% administrative fee to offset the City's cost of administering the program. The administrative fees shall be deposited in the enterprise fund associated with the Improvements.

G. Latecomer's Agreements cannot be combined with other refund or crediting systems provided by the Missoula Municipal Code or administrative rules.

H. Once a Latecomer's Agreement has been approved by the City, for a period of ten (10) years after the City's approval and acceptance of the Improvements, no property owner or their representative desiring to develop adjacent to those Improvements shall be issued any building permit or be allowed to access onto the street until their proportionate latecomer's fee, as determined by the City, has been paid to the City Finance Officer or designee.

12.10.140 Inspection by Public Works and Mobility.

Commented [SR21]: Moved to UDC Chapter 6.2.5.B

All right-of-way improvements shall be inspected and perform to the approval of the Director. Public Works and Mobility staff may at any time, when right-of-way improvements are not being constructed in accordance with this chapter, have authority to order the contractor constructing right-of-way improvements to suspend work until construction conforms with the specifications set forth in this chapter.

Sidewalk inspections will consist of a subgrade inspection before the base material is placed and a final inspection after the concrete placement. Upon request, the City will perform courtesy inspections of concrete forms; but this is not a required inspection.

The contractor will be required to request an inspection the day before, or prior to 7:00 AM on the day of the inspection. Inspections will occur Monday through Friday during normal working hours 8:00 AM to 5:00 PM, but will not occur on city-observed holidays.

The City of Missoula reviewed, stamped and approved set of plans shall be available on all construction site(s) at all time(s).

Repair work that does not require complete removal and replacement requires an inspection.

For asphalt paving, inspections are required at (1) subgrade installation, (2) subbase/base installation, (3) striping, and (4) final inspection. (Ord. 3709, 2023; Ord. 3670, 2020)

12.10.150 Right-of-Way/ Public Easement Paving Construction Work – Application, Approval, and Permit Required.

Commented [SR22]: Moved to UDC Chapter 6.2.1.F

A. Application for permit(s) for paving construction work improvements specified in this chapter shall be made to the City Engineer on permit application form(s) provided for such permitting purposes.

B. City staff shall review and determine whether the proposed improvements are in conformance with the provisions and standards set forth in Missoula Municipal Code and all other applicable federal, state and local regulations and requirements. (Ord. 3670, 2020)

12.10.160 Right-of-Way/Public Easement Paving Construction Work -- Standards Compliance Required.

Commented [SR23]: Moved to UDC Chapter 6.2.1.D

A. All paving construction work for parking facilities, sidewalks, curb and gutter, driveway and alley approaches, that are placed in the right-of-way shall be constructed in accordance with the most current published version of:

1. Americans with Disabilities Act (ADA) Accessibility Standards
2. Manual on Uniform Traffic Control Devices (MUTCD)
3. Montana Pollutant Discharge Elimination System (MPDES)
4. Montana Public Works Standard Specifications (MPWSS)
5. Missoula City – County Air Pollution Control Program requirements.
    a. All contractors, engineers, architects and designers shall specifically examine and closely observe the requirements of the Missoula City – County Air Pollution Control Program, Chapter 8 - Fugitive Particulate during all phases of paving construction work.
6. Missoula City Public Works Standards and Specifications Manual including Standard Drawings.

B. In the event of conflict or discrepancy between the MUTCD, MPDES, MPWSS and any Missoula City Public Works Standards and Specifications Manual, documentation and / or related specifications, the most stringent requirement shall prevail and govern. (Ord. 3670, 2020)

12.10.170 Approaches onto Right-of-Way – Approval.

Commented [SR24]: Moved to UDC Chapter 6.2.5.A

A. All new approaches onto right-of-way shall be referred to the City Engineer for approval.
B. Upon approval by the City Engineer, a right-of-way permit shall be required before construction can begin.
C. Approaches shall conform to the Missoula City Public Works Standards and Specifications and MMC Title 20 – Zoning. Any deviation from this section must be approved by the City Engineer. (Ord. 3670, 2020)

12.10.180 Approaches onto Right-of-Way – Locations.

Commented [SR25]: Moved to UDC Chapter 6.2.5.A

Approaches shall be located at the discretion of and by the approval of the City Engineer or designee.

A. Approaches are permitted in the following scenarios:
    1. From Streets:
        a. Existing paved approach and driveway.
        b. Existing unpaved approach or driveway serving an existing garage or other parking facility.
        c. Where a building permit has been submitted and approved for the construction of on-site parking facility.
        d. To access an approved parking facility located outside the front and side street setbacks.
        e. Where the approved parking facility is at least 20 feet from the most restrictive of these elements: (1) the property line, (2) edge of access easement on public street frontages, or (3) from the edge of

asphalt, back of curb, or back of sidewalk (if present or required) on private streets within a public access easement.

f. A minimum of thirty 30 feet of distance between single or paired driveway approaches, on the same parcel, is recommended and constitutes the width of an on-street parallel parking space.

g. Existing through lots whose backyard fronts a public right of way may have additional approach to the back yard.

h. A minimum of 20 feet from a crosswalk or an inferred crosswalk, when the primary vehicle movement is backing towards the crosswalk.

2. From Alleys:

a. A parking facility with a minimum 24 feet backing distance, which may include right-of-way or public access easement.

b. An approach from the alley may be added if there is an existing approach meeting the requirements of this chapter from the public street.

B. Approaches are prohibited in the following scenarios:

1. To access unpaved areas such as backyards, side yards etc.

2. To access illegal or nonconforming parking areas such as the area within the right-of- way or in building set-backs as defined in zoning regulations.

3. Locations with adverse sight distance, proximity to intersections, or safety concerns as determined by City Engineer.

4. Where physical conditions exist, which do not allow the approach grade to be 8% or less

5. Approaches must be a minimum of five feet from property lines for curbside sidewalk and one foot for boulevard sidewalks unless the driveway is shared.

C. Approach locations that do not meet the requirements for sight distance, grade, proximity to intersection(s), or any other hazardous or unsafe traffic condition, as determined by the City Engineer, may be mitigated by controlling the approach configuration (i.e. right-in, right-out) if approved by the City Engineer.

D. Each single dwelling unit shall be limited to one approach unless additional approaches are approved by the City Engineer.

E. Approaches shall be located per the following:

1. Mid-block parcels shall prioritize approaches in the following order:

a. Alley access

b. Fronting street access

2. Corner parcels shall prioritize approaches in the following order:

a. Alley access

b. Side street or lowest traffic volume street access

c. Fronting street or highest traffic volume street access

3. Through lots shall prioritize approaches in the following order:

a. Side street or lowest traffic volume street access

b. Fronting street or highest traffic volume street access

F. Approaches onto Collector or Arterial streets shall be avoided when other options are available especially for driveways where vehicles enter the street with a backing movement.

G. An existing curb cut and approach shall be removed, the curb restored to full height, and the previous parking area shall be landscaped if the parking facility is or has been removed. Whenever the use of any existing approach is planned to or will be discontinued by reason of a change in the use or design of the private property, the owner of the property shall repair the sidewalk, curb/gutter and boulevard affected by the abandoned approach as directed by the City Engineer unless the existing driveway meets the requirements set forth in MMC Chapter 12.17 Parking Facilities. If the owner of the property fails to repair the sidewalk or curb/gutter, and boulevard, the City Engineer may order the repair and the cost thereof be assessed against the private property.

H. Existing approaches impacted by city-initiated right-of-way improvement projects shall be reviewed and approved by City Engineering. (Ord 3709, 2023; Ord. 3670, 2020)

12.10.190 Approaches onto Right-of-way – Approach Width.

Commented [SR26]: Moved to UDC Chapter 6.2.5.A

~~Approach construction specifications are detailed in the Missoula City Public Works Standards and Specifications Manual. (Ord 3709, 2023; Ord. 3670, 2020)~~

12.10.200 Rights-of-Way – Vehicles to be Parked within Private Property Lines.

Commented [SR27]: Moved to UDC Chapter 6.2.5.A

~~Rights-of-way shall not be used for private or commercial purposes unless the use is specifically authorized by this Title or the Director. A permit for the construction of new approach(es) shall not be issued unless vehicles to be served or serviced can be parked entirely within the private property lines and meets all applicable requirements of MMC Title 12 and/or MMC Title 20 - Zoning. (Ord. 3670, 2020)~~

12.10.210 Condemnation by City Engineer.

All right-of-way improvements which, by reason of natural deterioration or decay, or by reason of unevenness, steps, rapid slopes, or from any cause whatsoever, has or will in the near future become hazardous/dangerous to the public safety, may be condemned by the City Engineer, and may be immediately removed/replaced or otherwise repaired, and the cost thereof shall be assessed to the adjacent property.

Any property whose access adversely effects the public use or public infrastructure shall be required to mitigate the adverse effects by taking measures to prevent accelerated deterioration of the public infrastructure in order to maintain the current level of use. (Ord. 3670, 2020)

12.10.220 Defective Sidewalks – Failure of Owner to Repair.

Upon the failure of the owner of any property to make repairs to the sidewalk adjacent their property after notice is provided pursuant to this Chapter, and when, in the opinion of the City Engineer, immediate repairs are necessary to prevent accidents, the City Engineer may immediately proceed with the same, and the full cost of such repairs shall be assessed against the property, as provided in MMC Chapter 12.10. (Ord. 3670, 2020)

12.10.230 City Council to Order Construction and/or Repair.

Whenever it is deemed necessary to construct any right-of-way improvements in the City, the City Council may, by resolution duly passed and approved, order the construction of such right-of-way improvements, specifying in the order the name of the street along which and the number of the lot or lots, and blocks in front of which, the right-of-way improvements are to be constructed or repaired. (Ord. 3670, 2020)

12.10.240 Notice – Required.

Upon the City Council ordering the construction of any right-of-way improvements, the City Engineer shall give written notice thereof within 60 days to the holder of the record title of the property adjacent to which the right-of-way improvements have been ordered constructed or repaired. (Ord. 3670, 2020)

12.10.250 Notice – Service.

Service of the written notice provided in Chapter 12.10 must be made either by certified or registered letter directed to the owner at his/her last known place of residence and deposited in the United States post office within the City, with all necessary postage and registry fees prepaid thereon, or by publication thereof once a week for two successive weeks in a newspaper of general circulation in the city. (Ord. 3670, 2020)

12.10.260 Notice – Service by Publication.

If service of notice be made by publication, all right-of-way improvements ordered constructed or repaired by the City Council on the same date may be included in one notice, and the notice when published shall not be directed to any person but shall be entitled "Notice to Construct Right-of-Way Improvements." (Ord. 3670, 2020)

12.10.270 Notice – Contents.

The notice shall refer to the order or date of the City Council meeting ordering the construction or repair of right-of-way improvements and shall describe the nature of work ordered constructed or repaired, designating the name of the street along which and the number of the lot or lots and blocks in front of or along which the right-of-way improvements have been ordered constructed or repaired (Ord. 3670, 2020)

12.10.280 Notice – To Contain Statement as to Noncompliance.

The notice shall further state that if the holder of the record title of the property adjacent to which the right-of-way improvements have been ordered constructed or repaired fails to construct such right-of-way improvements for a period of 30 days from the date of the mailing of such notice, if service of the notice shall be made by mail, or for a period of 30 days from the date of the first publication of the notice, if service thereof be made by publication, the right-of-way improvements will be constructed or repaired by a City sidewalk and curb contractor, and the cost of the construction/repair of the same, together with all associated expenses connected therewith, will be assessed against the property adjacent to which the same has been ordered constructed or repaired and will become an assessment thereon. (Ord. 3670, 2020)

12.10.290 Notice – Filing of Copies to be Conclusive Proof of Service.

Copies of all notices mailed with the registry or certified mail receipts attached thereto, and copies of all notices published with the publisher's affidavit of publication attached thereto shall be filed by the City Engineer in his/her office and shall be conclusive proof of the service thereof. (Ord. 3670, 2020)

12.10.300 Construction by City – After Noncompliance with Notice.

If the owner of any property adjacent to which any right-of-way improvement has been ordered constructed or repaired in the manner provided by this chapter, fails to construct the same for a period of 30 days after the date of the first publication of such notice, or for a period of 30 days after the date of the mailing of the notice, the City Engineer shall let a contract for the construction of all right-of-way improvements ordered to be constructed or repaired. The cost of the construction or repairs, together with all expenses in connection therewith, shall be assessed against the property adjacent to which the right-of-way improvements is constructed or repaired and shall be collected in the manner now or hereafter to be provided by the provisions of this code or other City ordinance. (Ord. 3670, 2020)

12.10.310 Construction by City – Regulations Generally.

The City shall let a contract or contracts for the construction of all right-of-way improvements which shall be ordered constructed during the ensuing year and which the owners of the property, adjacent to which the right-of-way improvements have been ordered constructed or repaired, fail to construct, or where the property owner petitions the City Engineer to have the right-of-way improvements installed adjacent to their property, or where the City Engineer may order the construction or repair of any right-of-way improvements. (Ord. 3670, 2020)

12.10.320 Payment to be Made by City Check.

Payment for right-of-way improvements construction or repair shall be made by check drawn upon the appropriate City accounts as determined by the City Finance Officer. Prior to final payment or the releasing of any retainage or holdback of funds due, the contractor shall satisfy the City Engineer that all bills incurred for the labor and materials are fully paid. (Ord. 3670, 2020)

12.10.330 Assessment for Construction – When Work Completed by City Contractor.

The total cost of all work associated with right-of-way improvements constructed or repaired by the City contractor, in accordance with the orders of the City Council, (which total cost shall include that of the sidewalk, approach, curb or alley approach, asphalt repairs, as well as that of any notice, publication, inspection, grade, engineering, contract administration, fill, retaining walls, hand-railing, manholes, manhole covers, trap doors, private crossings, traffic control devices, pavement markings or striping, utility connections, repairs or replacements which are located within the limits of the construction installations, and all other necessary expenditures), shall be assessed against the property adjacent to the right-of-way improvements thereto, are installed lying within the right-of-way. (Ord. 3670, 2020)

12.10.340 Assessment for Construction – When Work Completed by Private Contractor.

The cost of any right-of-way improvements constructed or repaired by a City licensed and bonded contractor, initiated by any property owner and not included within the provisions of Section 12.10.330, may be assessed to the property adjacent to which any right-of-way improvements are constructed or repaired, lying within the right-of-way; provided, that such contractor shall, within 30 days after the completion of such right-of-way improvements, file with the City Engineer an itemized statement of such work, accompanied with a written request of the property owner that the cost of such right-of-way improvements be assessed against his/her property. Such City licensed and bonded contractor shall be paid as provided in Section 12.10.320. (Ord. 3670, 2020)

12.10.350 Assessment for Construction – May be Paid in Full.

Assessments may be paid in full at any time following the first tax notice by payment of the whole amount thereof remaining unpaid, together with the interest thereon to the first day of January following. (Ord. 3670, 2020)

12.10.360 Assessment for Construction – Payable in Installments.

Assessments are payable in installments extending over a period of years, and become due and payable each year when City taxes become due and payable. The following table shows the principal amount due annually:

Period of Years Financed	Principal Amount Due
Twenty (20) years (default if no other period is selected by the property owner)	1/20 (one twentieth)
Twelve (12) years	1/12 (one twelfth)
Eight (8) years	1/8 (one eighth)

(Ord. 3670, 2020)

~~**Chapter 12.12**~~
~~**Repealed**~~

~~**12.12.001** Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004; Ord. 2043 §5, 1979; prior code §28-14).~~

~~**12.12.003** Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004; Ord. 2043 §5, 1979; prior code §28-14).~~

~~**12.12.005** Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004; Ord. 2043 §5, 1979; prior code §28-14).~~

~~**12.12.007** Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004; Ord. 2043 §5, 1979; prior code §28-14).~~

~~**12.12.009** Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004; Ord. 2043 §5, 1979; prior code §28-14).~~

~~**12.12.010** Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004; Ord. 2043 §5, 1979; prior code §28-14).~~

~~**12.12.020** Repealed (Ord. 3498, 2013; Ord. 3492, 2013; Ord. 3244, 2004; Ord. 2043 §6, 1979; prior code §28-15).~~

~~**12.12.025** Repealed (Ord. 3670, 2020Ord. 3498, 2013)~~

~~**12.12.030** Repealed. (Ord. 3498, 3498; Ord. 3492, 2013; Ord. 3244, 2004; Ord. Prior code §28-16).~~

12.12.040 Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3492, 2013; Ord. 3244, 2004; Ord. 2043 §7, 1979; prior code §28-17).

12.12.050 Repealed. (Ord. 3498, 2013; Ord. 3244, 2004; Ord. Prior code §28-71).

12.12.055 Repealed (Ord. 3670, 2020; Ord. 3498, 2013)

12.12.060 Repealed (Ord 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004)

12.12.070 Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004; Ord. 2108, 1980; prior code §28-72)

12.12.075 Repealed (Ord. 3670, 2020; Ord. 3498, 2013)

12.12.080 Repealed (Ord. 3670, 2020; Ord. 3628, 2019; Ord. 3498, 2013; Ord. 3492, 2013; Ord. 3244, 2004; Ord. Prior code §28-90).

12.12. Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3492, 2013; Ord. 3244, 2004; Ord. Prior code §28-80).

12.12.095 Repealed. (Ord. 3670, 2020; Ord. 3498, 2013)

12.12.100 Repealed (Ord. 3670, 2020; Ord. 3526, 2014; Ord. 3498, 2013; Ord. 3492, 2013; Ord. 3476 § 3, 2012; Ord. 3462 § 3, 2011; Ord. 3433 §3, 2010; Ord. 3384 §3, 2008; Ord. 3350 §3, 2007; Ord. 3323 §3, 2006;Ord. 3298, 2005; Ord. 3259 §2, 2004; Ord. 3244, 2004; Ord. 3227, 2003)

12.12.110 Repealed (Ord. 3498, 2013; Ord. 3244, 2004).

12.12.120 Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004) .

12.12.130 Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3492, 2013; Ord. 3416, 2010; Ord. 3244, 2004; Ord. 2370 §1, 1984; Ord. 2093, 1979).

12.12.140 Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3492, 2013; Ord. 3244, 2004; Ord. 2994, 1996; Ord. 2208, 1981; Ord. 2199 §1, 1981; Ord. 2093 (part), 1979).

12.12.150 Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3492, 2013; Ord. 3244, 2004; Ord. 2043 §19, 1979; prior code §28-67).

12.12.155 Repealed. (Ord. 3670, 2020; Ord. 3498, 2013)

12.12.160 Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004; Prior code §28-18).

12.12.170 Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3492, 2013; Ord. 3244, 2004; Ord. 1991, 1979; prior code §28-21).

12.12.175 Repealed (Ord. 3670, 2020; Ord. 3498, 2013)

12.12.180 Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004; Ord. 1992, 1979; prior code.§28-22).

12.12.190 Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3492, 2013; Ord. 3244, 2004; Prior code §28-73).

12.12.200 Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3492, 2013; Ord. 3244, 2004; Ord. 2043 §21, 1979; prior code §28-91)

112.12.210 Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004; Ord. Prior code §28-51).

12.12.220 Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244; Prior code §28-52).

12.12.230 Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004; Prior code §28-53).

~~**12.12.240** Repealed (Ord 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004; Ord. Prior code §28-54).~~

~~**12.12.250** Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004; Ord. 2043 §17, 1979; prior code §28-55).~~

~~**12.12.260** Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004; Prior code §28-56).~~

~~**12.12.270** Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3492, 2013; Ord. 3244, 2004; Prior code §28-57).~~

~~**12.12.280** Repealed (Ord. 3670, 2020' Ord. 3498, 2013; Ord. 3244, 2004; Ord. 2043 §18, 1979; prior code §28-58).~~

~~**12.12.290** Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004, Ord. Prior code §28-60).~~

~~**12.12.300** Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004; Ord. Prior code §28-62).~~

~~**12.12.310** Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004; Ord. Prior code §28-63).~~

~~**12.12.320** Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244, 2004; Ord. Prior code §28-64).~~

~~**12.12.330** Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3244. 2004; Prior code §28-66).~~

~~**12.12.340** Repealed (Ord. 3670, 2020; Ord. 3498, 2013; Ord. 3416, 2010; Ord. 3244, 2004; Ord. 2611 §1, 1988; prior code §28-65).~~

Chapter 12.14

RIGHT-OF-WAY USE (TEMPORARY OCCUPANCY) PERMIT/ENCROACHMENT PERMITS

Commented [SR28]: Moved to UDC Chapter 6.2.8

Sections:

12.14.001 Authority
12.14.003 Purpose
12.14.005 Applicability
12.14.007 Conflicting provisions
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12.14.010 Definitions
12.14.020 Right of Way Occupation Permit Required
12.14.025 Right-of-Way Use (Temporary Occupancy) Permit Liability and Limitation.
12.14.030 Permit Application Fee
12.14.040 Right-of-Way Use (Temporary Occupancy) Permit Inspection
12.14.050 Revocation of Right-of-Way Use (Temporary Occupancy) Permit
12.14.060 Garbage Receptacles
12.14.065 Temporary Power Cords
12.14.070 Repealed
12.14.075 Notice of Violation; Failure to Comply
12.14.077 Violations and Penalties
12.14.080 Exceptions to this Chapter

Commented [SR30R29]: Moving to new section 065

Section 1
12.14.001 Authority.
This ordinance is adopted pursuant to the powers granted and limitations imposed by Montana state law and the City of Missoula's self-government charter. (reference MCA 7-12-41, MCA 7-14-41, MCA 7-15-41 and MCA 60-1-103) (Ord. 3541, 2015)

Section 2
12.14.003 Purpose.

A. This ordinance is adopted for the purpose of setting forth right-of-way use (temporary occupancy / short-term) and encroachment (long-term) permits and requirements for activities occurring and / or objects placed upon, over, through or within the public right-of-way to ensure the proposal is compatible with designated or primary uses of the public rights-of-way and / or public easements, and

B. to ensure the safety of the public, and

C. to protect the City of Missoula's investment in public infrastructure which includes but is not limited to; roadways / streets, alleys, traffic lights, traffic signage, streetlights, curb/gutter, boulevards, sidewalks, trails and utilities, located upon, over, under, or within the public rights-of-way and / or public easements.

(Ord. 3541, 2015)

Section 3
12.14.005 Applicability.
This code shall apply to activities occurring and / or objects / obstacles placed upon, over, or within the public right-of-way and / or public easements within the City of Missoula. (Ord. 3541, 2015)

Section 4
12.14.007 Conflicting Provisions.
If the provisions of this ordinance conflict with other provisions or regulations of Federal, State or Local Government, then the most restrictive requirement(s) shall apply to the extent permitted by law. (Ord. 3541, 2015)

Section 5
12.14.009 Abbreviations / Acronyms.

"ADA" = Americans with Disabilities Act
For additional information visit http://www.ada.gov

"CBD" = Central Business District
For additional information consult current Zoning Boundary Map

"MCA" = Montana Code Annotated
For additional information visit http://leg.mt.gov/bills/mca

"MDT" = Montana Department of Transportation
For additional information visit http://www.mdt.mt.gov

"MMC" = Missoula Municipal Code
For additional information visit http://www.ci.missoula.mt.us

"MPWSS" = Montana Public Works Standard Specifications
For additional information visit http://www.mdt.mt.gov/business/contracting/standard_specs.shtml

"MUTCD" = Manual on Uniform Traffic Control Devices
For additional information visit http://www.mutcd.fhwa.dot.gov

(Ord. 3541, 2015)

Section 6
12.14.010 Definitions.

A. **"Public Easement"** is an easement for public benefit and use. Public easements may contain roadways / streets, curb/gutter, sidewalks, trails, utilities and other related features (these may also be designated as: public access easement, public sidewalk easement, public right-of-way easement, public roadway / street easement, public non-motorized easement). Public easements shall be subject to the same specifications, fees, inspections and requirements as public right-of-way.

B. **"Public right-of-way"** is a general term denoting land, property, or any interest in land or property, usually in a strip, acquired or devoted to highway / road / street purposes. Basic infrastructure improvements may include but are not limited to alleys, curb/gutter, boulevard and / or sidewalk / trail.

C. **Right-of-Way Use (Encroachment)** shall mean any activity / object and / or obstacle, occurring / placed / constructed / located, upon / over / within the public right-of-way or easement and that is owned / possessed / controlled by an entity other than a governmental body or a public utility. A right-of-way encroachment is semi-permanent in nature with a duration exceeding thirty-six (36) months / three (3) years.

D. **Right-of-Way Use (Temporary Occupancy / short-term)** shall mean any activity / object and / or obstacle occurring / placed / constructed / located, upon / over / through / within the public right-of-way or easement that impedes free and safe movement of vehicular, bicycle, pedestrian travel, etc., and / or access or parking. A right-of-way use (temporary occupancy) shall be temporary or short-term in nature with a maximum duration of thirty-six (36) months / three (3) years or less. (Ord. 3541, 2015; Ord. 3244, 2004)

E. **Temporary Traffic Control Plan** shall mean a plan for the safe management and passage of motor vehicles, bicyclists, pedestrians, etc., as well as workers, equipment and materials. Temporary traffic control plans shall be submitted, reviewed and approved by the City Engineer prior to use of the public right-of-way or public easement whether a right-of-way use (temporary occupancy permit is required or not. Temporary traffic control plans shall comply with the current revision / version of the Manual on Uniform Traffic Control Devices (MUTCD), Montana Department of Transportation (MDT), Americans with Disabilities Act (ADA), the City of Missoula ~~Public Works~~ Standards and Specifications Manual (COMSSM). (Ord. 3541, 2015)

Section 7
12.14.020 Right-of-Way Use (Temporary Occupancy) Permit Required.
The occupation and / or use of any public right-of-way and / or public easement for the purpose of performing the following, including but not limited to; building maintenance, construction and / or repairs, tree removal / installation or pruning, landscaping, utility work, temporary placement of a dumpster or other equipment, or any other activity as determined by the City Engineer that impedes the safe passage of vehicular, bicyclist and / or pedestrian traffic, requires a right-of-way use (temporary occupancy) permit from Public Works and Mobility and payment of the necessary fees. Fees for the use (temporary occupation) of any public right-of-way shall be established and amended by City Council resolution after conducting a public hearing.

A right-of-way use (temporary occupancy) permit shall be required for the following:

A. The use or closure of one (1) or more lanes of traffic on a public roadway / street for a period of one (1) hour or more (other than activities authorized by Missoula Municipal Code (MMC) Chapter 12.58 Special Events Permits). Note: the guidelines from the Manual on Uniform Traffic Control Devices (MUTCD) and the City of Missoula Standard Drawings for Temporary Traffic Control Plans shall be implemented and followed for any / all lane closure(s).

B. The use or closure of a public alley for a period of one (1) hour or more.

C. The use or closure of the shoulder, parking lane or parking space(s) located on public right-of-way for four (4) hours or more. Permission from the Missoula Parking Commission (WPC) shall be obtained for occupancy of a metered / leased parking space and / or signed loading zone that is located within the jurisdiction of the Parking Commission. (see MMC 10.22.240)

D. The use or closure of a public sidewalk / trail in the ~~Central Business District (CBD)~~Downtown - Core for a period of one hour (1) or more. Note: the guidelines from the Manual on Uniform Traffic Control Devices (MUTCD), Americans with Disabilities Act (ADA)and the City of Missoula Standard Drawings for Temporary Traffic Control Plans shall apply to any / all public sidewalk / trail closure. Any / all trail use or closure shall be reviewed and approved by the City of Missoula Parks and Recreation Department prior to issuance of the permit by Public Works and Mobility.

E. The use or closure of all other public sidewalks / trails for a period of four (4) hours or more. Note: the guidelines from the Manual on Uniform Traffic Control Devices (MUTCD), Americans with Disabilities Act (ADA) and the City of Missoula Standard Drawings for Temporary Traffic Control Plans shall apply to any / all public sidewalk / trail closure. Any / all trail use or closure shall be reviewed and approved by the City of Missoula Parks and Recreation Department prior to issuance of the permit by Public Works and Mobility.

F. The use or placement of a garbage receptacle(s), including but not limited to; garbage cans, dumpsters, recycling containers and / or other waste receptacles used for the collection of garbage / refuse / waste that is located / placed, upon / within a public roadway / street or parking lane for a period of four (4) hours or more.

F. G. The placement of a temporary power cord for charging electric vehicles, per the Unified Development Code (UDC).

All right-of-way use (temporary occupancy) permits shall be submitted for review and approval shall install and maintain a temporary traffic control plan and the required devices / signage, in compliance with the current revision or version of the Manual on Uniform Traffic Control Devices (MUTCD), Montana Department of Transportation (MDT), Americans with

Disabilities Act (ADA) and the City of Missoula ~~Public Works~~ Standards and Specifications Manual (COMSSM). Temporary traffic control plans shall provide for safe management and passage of motor vehicles, bicyclists, and pedestrians as well as workers, equipment and materials.

Exceptions: Public federal, state, local government employees and contractors working under contract to a public agency, engaged in authorized work duties shall be exempt from obtaining a right-of-way use (temporary occupancy) permit, however, shall be required to install and maintain any / all temporary traffic control plan, devices and / or signage as outlined and / or required above.

The following items / objects may be exempt from this permit requirement, as may be approved by the City Engineer:

Mailboxes, newspaper dispensers, public garbage receptacles (located / placed, upon / within a public roadway / street or parking lane for less than four (4) hours), approved / permitted sandwich-board signs, permanent public benches, bus stop shelters, bicycle racks, public utility structures, and other items / objects which the City Engineer may determine to be exempt.

Prohibitions: Construction / landscape materials (including but not limited to; bark / wood chips, dirt, gravel, rock / stone) and / or any other items / matter / material that may block, inhibit, obstruct or otherwise deteriorate the free passage / drainage and use of the public right-of-way shall not be permitted to be placed or stored upon / over / within the public right-of-way and / or a public easement.

Placement of shipping / storage containers of any kind or type; reusable, multi-purpose, steel / wood, intermodal freight containers, shall not be located nor placed upon or within the public right-of-way and / or public easement for any period of time; these objects shall not be permitted upon or within the public right-of-way and / or public easement.

Right-of-way use (temporary occupancy), whether required to be permitted or not, shall not violate MMC Chapter 12.28 - Obstructions and / or any other portion of Missoula Municipal Code (MMC), UDC or Manual. (Ord 3709, 2023; Ord. 3541, 2015; Ord. 3492, 2013; Ord.
3244, 2004)

Section 8

12.14.025 Right-of-Way Use (Temporary Occupancy) Permit Liability and Limitation.

Issuance of a right-of-way use (temporary occupancy) permit includes the responsibility of the permittee(s) to maintain the approved use (temporary occupancy) in such a manner so as to eliminate any / all hazard(s) and to prevent injury to any / all citizens occupying / using the public right-of-way adjacent to the right-of-way use (temporary occupancy). The right-of-way use (temporary occupancy) permittee shall release, defend, indemnify and hold harmless the City of Missoula from any / all claims of any form or kind, including but not limited to; any / all damage, loss, injury to person(s) and / or property, and / or death to any person(s) that results from or are caused by the said right-of-way use (temporary occupancy) permit.

Issuance of a right-of-way use (temporary occupancy) permit shall be limited exclusively and explicitly to the use(s) described in the approved permit. No additional use(s) of any kind shall be implemented or provided for, constructed, erected and / or placed upon, over, or within the public right-of-way and / or public easement. (Ord. 3541, 2015)

Section 9

12.14.30 Permit Application Fee.

A. Any applicant wishing to acquire a permit to use (temporarily occupy) any right-of-way or public easement for the purposes set forth in MMC 12.14.020 shall obtain the permit before / prior to proceeding with any occupation of the right-of-way or public easement location / site. All applications shall include an approved temporary traffic and / or pedestrian control plan which shall conform with the Manual on Uniform Traffic Control Devices (MUTCD) as well as the City of Missoula standards, specifications and policies for temporary traffic control in work zones. All applications shall include a schedule of work, including dates, times and hours of duration for the use (temporary occupancy). All applications are subject to approval by the City Engineer.

B. The fee for the permit for the purposes set forth in Section 7 / MMC 12.14.020 shall be established and amended by City Council resolution after conducting a public hearing.

C. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for the work. The City Engineer may order the site vacated until the investigation is completed and the required permit is issued. An investigation fee, in addition to the permit fee shall be collected prior to issuance of the permit. The investigation fee shall be equal to the permit fee required by this code. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law. If the investigated activity is found not to require a permit under the requirements of this code the investigation fee will be waived.
(Ord. 3709, 2023; Ord. 3526, 2014; Ord. 3541, 2015; Ord. 3501 §2; 2013; Ord. 3492, 2013; Ord. 3476 §4, 2012; Ord. 3462 §4, 2011; Ord. 3244, 2004)

Section 10

12.14.032 Right-of-Way Encroachment Permit Required.
The encroachment upon, over, or within any public right-of-way and/or public easement by any object(s)/use(s) for a semi-permanent period and for the specific benefit or use of the adjacent property owner, including but not limited to; awnings, eaves, balconies, structure extension, or overhang of any kind/form, signs, hand railing, landing, steps, or stairs, or any other physical object as determined by Public Works and Mobility that extends/exists off of the adjacent property and is upon, over, or within the public right-of-way and/or public easement shall require a right-of-way encroachment permit from Public Works and Mobility and shall require payment of the necessary fees.

The City of Missoula City Council shall review all encroachments that may impact existing multimodal traffic patterns including but not limited to significant interruption or redirection of pedestrian, bicycle, and vehicle travel, and/or removal or relocation of parking spaces. The City Council must approve said encroachment by resolution. Encroachments for Sidewalk Cafes are considered under Title 12.18.

Encroachments may also require a Building Permit, Electrical Permit, Sign Permit, Zoning Compliance Permit, or other City required permit(s). A right-of-way occupancy permit may be required for the construction activities associated with an encroachment permit.

Issuance of a right-of-way encroachment permit shall not convey any ownership interest in the public right-of-way and/or public easement regardless of the right-of-way encroachment privileges the permit provides.

Right-of-way encroachments, whether required to be permitted or not, shall not violate MMC Chapter 12.28 – Obstructions or any other portion of Missoula Municipal Code (MMC.)
(Ord. 3709, 2023; Ord. 3553, 2015; Ord. 3541, 2015)

Section 11
12.14.034 Right-of-Way Encroachment Permit Requirements Within the Central Business District (CBD).
Signs, awnings, and other attached encroachments that are attached/connected/mounted/secured to building(s) or structures and that overhang the public right-of-way within the CBD, require a right-of-way encroachment permit. Signs, awnings and other attached encroachments located/placed upon, over, or within the public right-of-way/public easements shall provide a minimum of nine (9') feet clearance above the curb/gutter, sidewalk, trails, and fourteen (14') feet above roadway/street and/or alley, and shall project a maximum of seven (7') feet from the face of the building or structure. In addition such encroachment s may require a Building Permit, Electrical Permit, Sign Permit, Zoning Compliance Permit, or other City required permit(s).
(Ord. 3541, 2015)

Commented [SR32]: Moved to UDC Chapter 6.2.8.B

Section 12
12.14.036 Right-of-Way Encroachment Permit Liability and Limitation.
Issuance of a right-of-way encroachment permit includes the responsibility of the permittee(s) to maintain the approved encroachment in such a manner so as to eliminate any/all hazard(s) and to prevent injury to any/all citizens occupying or using the public right-of-way and/or public easement adjacent to the right-of-way encroachment. By signing the right-of-way encroachment permit the permittee agrees to release, defend, indemnify and hold harmless the City of Missoula from any/all claims of any form or kind, including but not limited to; any/all damage, loss, injury to person(s) and/or property, and/or death to any person(s) that results from or are caused by the encroachment.

Commented [SR33]: Moved to UDC Chapter 6.2.8.B

Public Works and Mobility may require an additional/special insurance policy from the permittee(s) to be issued in the name of the City of Missoula, protecting the public and the City of Missoula from liability and/or any insurable claim(s).

Issuance of a right-of-way encroachment permit shall be limited exclusively and explicitly to the object(s) or use(s) described in the approved permit. No additional object(s) or use(s) of any kind shall be provided for, constructed, erected and/or placed upon, over, or within the public right-of-way and/or public easement.
(Ord. 3709, 2023; Ord. 3541, 2015)

Section 13
12.14.038 Right-of-Way Encroachment Permit Application Fee.
A. Any applicant wishing to place an encroachment or obtain a permit for an existing encroachment upon, over, or within the public right-of-way and/or public easement as set forth in this Chapter shall apply for and obtain a right-of-way encroachment permit from Public Works and Mobility prior to proceeding with any encroachment activity. All applications shall include a detailed plan for the right-of-way encroachment including safety specifications, Building Permits (as applicable), Zoning Permits (as applicable) and shall comply with any/all other Federal, State and Local requirements and

Commented [SR34]: Moved to UDC Chapter 6.2.8.B

specifications. All right-of-way encroachment permit applications shall be subject to review and approval by Public Works and Mobility.

The permits application shall include plans that contain the following information:

1. Scale of no greater than 1 inch equals 20 feet
2. Location of all permittee and adjacent property lines
3. Location of existing features such as building lines, curbs, sidewalks etc.
4. Location of the proposed encroachment(s)
5. Elevation drawings of the proposed encroachment, as applicable/required
6. Artists rendition and/or architectural/engineering drawing(s) of the proposed encroachment, as applicable/required

B. The fee for an approved right-of-way encroachment permit shall be established and amended by City Council resolution after conducting a public hearing.

C .Whenever any work for which a right-of-way encroachment permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for the work. Public Works and Mobility may order the site vacated until the investigation is completed and the required permit is issued. An investigation fee, in addition to the permit fee shall be collected prior to issuance of the permit. The investigation fee shall be equal to the permit fee required by this code. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law. If the investigated activity is found not to require an encroachment permit under the requirements of this code the investigation and encroachment permit fee shall be waived.

D. A Memorandum of Understanding (MOU) shall be prepared by the City of Missoula, Public Works and Mobility and signed by the applicant(s) and/or property owner(s) for filing with the Missoula County Clerk and Recorders Office. The MOU shall list any/all conditions, limitations, restrictions, terms and other information pertinent to the issuance of the right-of-way (encroachment) permit.
(Ord. 3709, 2023; Ord. 3541, 2015)

Section 14
12.14.040 Right-of-Way Use (Temporary Occupancy) Permit Inspection/Encroachment Permit Inspection.

Commented [SR35]: Moved to UDC Chapter 6.2.8.B

A. Public Works and Mobility shall inspect all temporary traffic control and vehicular, bicycle and pedestrian etc., safety devices. If the traffic control / public safety requirements set forth in the right-of-way use (temporary occupancy) or encroachment permit are not in compliance, then a correction notice in the form of a Stop Work Order (SWO) shall be issued to the permittee and all activities / work terminated until corrections are made by the permittee and approved by the City Engineer. In situations where a public roadway / street and / or alley is to be closed, the City Engineer may require advance notice to affected property owners and that the traffic control, once in place, shall be approved before the permitted activity / work commences.

B. Public Works and Mobility shall inspect right-of-way use (temporary occupancy) and encroachment permit applications, activities, work, and locations / sites for compliance with MMC Chapter 12.28 - Obstructions.

C. Public Works and Mobility shall inspect right-of-way Use (temporary occupancy) and encroachment permit locations / sites to evaluate the condition of public infrastructure (including but not limited to; curb/gutter, sidewalk, roadway/street and alley paving, grading, drainage structures, bridges [vehicular and pedestrian], railings, retaining walls, boulevard or median improvements, driveway approaches, alley approaches, curb ramps, landscaping, street lighting, traffic management signs, traffic signals, curb and pavement markings, traffic management structures, public utility connections and other related appurtenances) to determine if any harm, damage, degradation, or other adverse condition to the public infrastructure has occurred. Any / all resultant harm, damage, degradation, or other adverse condition to the public infrastructure shall be fully restored to prior condition or better, as determined feasible and / or appropriate by Public Works and Mobility. The permittee accepts full responsibility, including any / all resultant costs, for restoration of the public

infrastructure. Failure to comply with restoration requirements may result in the City of Missoula completing the restoration work and;

1. Assessing the adjacent property owner and / or

2. Drawing against the bonds posted by one or more licensed contractors and / or

3. Suspension or revocation of the City of Missoula Business License for the contractor(s) and / or adjacent business entity(ies).

D. Public Works and Mobility shall inspect a right-of-way encroachment work;

1. After placement and/or construction of the permitted encroachment for compliance with the approved right-of-way encroachment permit for the following, including but not limited to; size, location, amount of encroachment and visibility obstruction.

2. Right-of-way encroachments that require an architectural or structural engineering stamp shall be inspected and verified after completion by the appropriate professional prior to approval by the Public Works and Mobility.

3. After removal/abandonment of the permitted encroachment for compliance with restoration of the public right-of-way and/or public access easement and public infrastructure located upon/over/within, as detailed in this Chapter.

(Ord. 3709, 2023; Ord. 3541, 2015)

Section 15

12.14.050 Revocation of Right-of-Way Use (Temporary Occupancy) Permit or Encroachment Permits.

Commented [SR36]: Moved to UDC Chapter 6.2.8.B

A. All right-of-way use (temporary occupancy) or encroachment permits issued pursuant to this code are subject to revocation at any time by Public Works and Mobility whenever the public interest, welfare, or safety would be best served by the permit revocation. Revocation of the permit shall require the permittee to immediately remove the use (temporary occupancy) or encroachment and restore the public right-of-way / public easement to the original condition or better.

B. The right-of-way use (temporary occupancy) or encroachment permittee(s) shall be issued a notice of revocation in the form of a Stop Work Order (SWO) and / or a letter delivered by the U.S. Postal Service (USPS) Certified Mail stating the reasons, date, and time, that the permit has been / is / was revoked. The permittee(s) shall have the right to appeal the revocation to Public Works and Mobility and to correct or modify the noted discrepancies to meet requirements set forth by Public Works and Mobility if such is deemed feasible and / or appropriate.

(Ord. 3709, 2023; Ord. 3541, 2015; Ord. 3492, 2013; Ord. 3244, 2004)

Section 16

12.14.060 Garbage Receptacles.

A. Permitted Locations: A permit is not required for garbage receptacles, including but not limited to; garbage cans, dumpsters, grease receptacles, recycling containers and / or other waste receptacles used for the regularly scheduled collection of garbage / refuse / waste / recycling and may be located upon / within the public right-of-way, provided all of the following conditions are met:

1. There is no reasonable / serviceable location within the private property lines to place them.

2. If there is no reasonable / serviceable location within the private property, the receptacles shall be placed in the alley if / when / where available. All receptacles shall be located on private property or in alleys adjacent to the private property within the ~~Central Business District (CBD)~~Downtown - Core.

3. The receptacles are to be located adjacent to the user's property whenever possible. If the receptacle is to be located adjacent to a property other than the user's property, then permission shall be requested and if / when / where granted by the owner of the adjacent property, prior to placement, except within the ~~Central Business District (CBD)~~Downtown - Core.

4. When the user's property is located in the ~~Central Business District (CBD)~~Downtown - Core but not adjacent to an alley, then they shall use the alley nearest to their property.

5. The area around any / all receptacles shall be kept neat and clean and grease receptacles shall be emptied regularly and not present a health or odor problem. Failure to do so shall result in a Notice Of Violation (NOV). Continued violation or three (3) notifications within a one (1) year period shall result in an order to remove the receptacles from the public right-of-way.

B. Prohibited Locations: Except as permitted in Section A. Permitted Locations: (above), garbage receptacles, including but not limited to; garbage cans, dumpsters, grease receptacles, recycling containers, and / or other waste receptacles used for the regular collection of garbage / refuse / waste / recycling shall not be placed in the following locations:

1. Upon / within the public street right-of-way, except on collection day.

2. In any location which would prevent safe movement of vehicles, bicyclists or pedestrians, etc.

3. Other locations as determined by the City Engineer, Zoning officer, Health Officer or other City agent or as set forth in other City of Missoula Municipal Code(s) (MMC).

(Ord. 3541, 2015; Ord. 3492, 2013; Ord. 3244, 2004)

Section 17

12.14.065 Temporary Power Cords

A. Overview

a. As the use of electric vehicles (EVs) increases, access to charging infrastructure has become an important consideration. Residents without access to off-street parking face significant barriers to at-home EV charging or the use of winter vehicle technologies like diesel block heaters. This policy establishes guidelines for temporary placement of power cords within right-of-way to support broader access to necessary vehicle infrastructure, while ensuring public safety and the unobstructed use of the public right-of-way. If public right-of-way is under MDT's jurisdiction, then approval of charging infrastructure shall require MDT review and approval.

b. Residents who do not have off-street parking available (such as a driveway or a garage) may apply for a~~n annual~~ right-of-way use permit.

c. Residents shall obtain a right-of-way use ~~use p~~permit from the City of Missoula prior to placing a temporary cord across the right-of-way.

d. Permitted uses are limited to Level 1 (120V) and Level 2 (240V)~~low-voltage (110-120V)~~ cords only.

e. A ~~cord cover permi~~right-of-way use permit t ~~will~~ not be granted for ~~Level 2 (240V) or~~ Direct Current Fast Charging (DCFC) in any portion of the public right-of-way.

f. Use permits are only valid at the address identified by the permittee, and charging within the right-of-way may only take place contiguous to the permittee's property.

g. The use permit does not guarantee a reserved parking space, and the applicant cannot use signage or other means to reserve the parking space on a public way in front of their property.

h. Use permits may be revoked if deemed unsafe, an emergency arises, the resident is not operating their cord in accordance with their permit, the cord cover permit program terminates, or the City's and/or public need has changed.

B. Specifications

a. Conditions for obtaining a use permit include:

i. Only residents with an ADA accessible cord cover may charge across the sidewalk.

ii. ~~The property is required to have a ground-floor outdoor outlet that is protected by a ground-fault circuit interrupter (GFCI). All~~ receptacles that supply power for EV charging are required to have GFCI protection.

iii. For Level 2 (240V) charging equipment shall meet one of the following conditions:

1. Permanently connected EVSE that is directly connected to a branch circuit in accordance with the NEC; or

2. Cord-and-plug-connected EVSE, provided that the receptacle serving the EVSE is not accessible to the public and is located within an enclosed interior space or in a locked outdoor cabinet or enclosure on private property.

~~iv~~~~ii.~~ The outlet shall be located on private property. The permit applicant must be the property owner. If the applicant is not the property owner, they must submit a signed authorization letter from

Commented [SR37]: Moved from COMSSM Chapter 7

Commented [BH38]: is out-of-sequence in chapter, it appears ahead of Section 17 - MMC 12.14.070 "Repealed" code section, not sure this can be altered - maybe check with City Attorney regarding State Law allowances / requirements /// this numbering does not correspond to the Section index at the beginning of the chapter /// Section 18 - MMC 12.14.075 is currently "Notice of Violation; Failure to Comply" /// maybe consider revising "Section 16" to be "MMC 12.14.060 - Garbage Receptacles and Temporary Power Cords" = merging the two concepts

Commented [SR39R38]: It was likely a typo and meant to be 065 which was not used previously.

the property owner (using the provided template) granting permission to apply for and hold the temporary power cord permit. ~~linked to the permit holder's utility bill. If the residents do not pay the utility bill, they must obtain permission from the person or business who is responsible.~~

vi. Any electric vehicle charging equipment or associated wiring crossing or located within the public right-of-way shall comply with the National Electrical Code (NEC).

iv. Proof of homeowner's or renter's insurance .

b. Conditions for maintaining a use permit include:

i. A power cord shall cross perpendicular to the sidewalk to minimize obstacles to mobility.

ii. Cords shall be covered completely across the hardscaped area of the Sidewalk Zone sidewalk by an ADA compliant cord protector ramp while charging that is highly visible, stable, and secure.

iii. Cords may only cross the sidewalk zone (frontage zone, pedestrian zone, boulevard/furniture zones) and could include a protected bike lane if applicable. Cords shall not extend beyond the curb or pedestrian zone.

iv. When not actively plugged-in, all equipment (regardless of type), including power cords and ramps, shall be fully removed from the sidewalk area onto private property.

v. While in use, cords shall remain in the right-of-way area contiguous to the resident's property~~, not outside of it~~.

vi. Sidewalk EV charging connections permitted shall not be used for commercial charging operations in which electricity is sold to third parties or where a fee is charged in exchange for vehicle charging.

vii. All local parking regulations, temporary and permanent, remain and shall be obeyed.

viii. Permit holder~~s~~ may not utilize signage or other means to reserve parking in front of their residence.

ix. All snow and ice clearing requirements continue to apply.

x. ~~Residents~~ Permit holder shall comply with all relevant sections of the National Electric Code including using listed and labeled power cords for heavy outdoor use.

xi. Permit holder shall maintain current homeowner's or renter's insurance.

xii. The permit is issued only to the individual applicant and is valid solely at the property address listed on the approved permit. The permit is non-transferable.

Section 17

12.14.070 Repealed. (Ord. 3541, 2015; Ord. 3244, 2004)

Section 18

12.14.075 Notice of Violation; Failure to Comply.

Upon determination by Public Works and Mobility that a permittee has violated one (1) or more of the provisions of this Chapter, Public Works and Mobility shall provide either a Stop Work Order (SWO) or written notice by U.S. Postal Service (USPS) Certified Mail to the permittee to correct such violation. In the event that the permittee fails or refuses to correct such violation within twenty-four (24) hours of receiving the notice of violation, the permittees' right-of-way use (~~t~~temporary occupancy/encroachment) permit and / or City Business License may be suspended or revoked. Any permittee cited for three (3) or more violations of this Chapter over a one (1) year period, even if corrected, may have their right-of-way use (~~t~~temporary occupancy/encroachment) permit and / or City Business License revoked and / or not reinstated at time of renewal. (Ord. 3709, 2023; Ord. 3541, 2015)

Section 19

12.14.077 Violations and Penalties.

Any person convicted of a violation of any of the provisions of this Chapter shall be subject to revocation of their permit(s), a fine of at least $200.00 and not exceeding $500.00, for each offense. Each violation of a section or subsection of this Chapter, and each day that a violation continues, shall constitute a new and separate violation and shall bear all resultant fines and / or penalties. (Ord. 3541, 2015)

Section 20

12.14.080 Exceptions to this Chapter.

Activities upon, over, or within the public right-of-way / easement including but not limited to curb/gutter, sidewalks, streets, alleys, boulevards and trails that are regulated and / or permitted in other Chapters of the Missoula Municipal Code (MMC) shall be exempt from this Chapter. (Ord. 3541, 2015; Ord. 3244, 2004)

Section 21 12.14.090 Appeal Process

The permit applicant may appeal Public Works and Mobility decision to deny a right-of-way encroachment permit to the Missoula City Council by submitting a formal letter to Public Works and Mobility requesting that his issue be referred to the City Council citing justification as to why the Public Works and Mobility denial should be overruled. (Ord. 3709, 2023; Ord. 3541, 2015)

Chapter 12.16

SIDEWALK MAINTENANCE

Sections:

12.16.010 Duties of property owners to keep sidewalks repaired.
12.16.020 Legislative intent and purpose.
12.16.025 Definitions.
12.16.030 Snow and ice to be removed from sidewalks
12.16.035 Depositing of snow and ice restricted
12.16.040 Violations: work done, liability therefore, civil penalty and collection
12.16.045 Criminal penalties
12.16.050 Defective sidewalks—Accidents—Police report.
12.16.060 Defective sidewalks—Failure of owner to repair.
12.16.070 Absence of notice to repair not a defense against fines or assessments.
12.16.080 Unlawful to drive over or deface or destroy sidewalks.

12.16.010 Duties of property owners to keep sidewalks repaired. It is the duty of the owners or tenants of any premises within the city to keep the sidewalks in front of and adjoining their premises in good, safe and substantial condition and repair, and the owners or tenants shall see that all breaks and unsoundness of any character resulting from natural deterioration, or from any cause whatever, are repaired with all possible dispatch. (Prior code §28-1).

12.16.020 Legislative intent and purpose.

A. It is the intent of the City Council to provide safe, easily passable sidewalks for pedestrian wintertime travel within the City of Missoula, and to require the owners or tenants of the adjoining premises to keep the same free from snow or other obstruction, in accord with 7-14-4105 (3) M.C.A.

B. It is the further intent of the City Council that any person who fails to keep his/her sidewalks cleaned per the requirements of this ordinance may be liable for actual costs of the City cleaning the sidewalk plus a civil penalty plus a criminal penalty.

It is also the intent of the City Council that the criminal offenses listed in this ordinance be offenses involving absolute liability. Those offenses shall not require proof of any one of the mental states described in subsections (33), (37) and (58) of Section 45-2-101, M.C.A., and there shall be no penalty of imprisonment for a violation of this chapter. (Ord. 3040, 1997)

12.16.025 Definitions. The following definitions shall apply in the interpretation and enforcement of this ordinance:

A. "City" is the City of Missoula.

B. "Director" is the Director of Public Works and Mobility or his/her duly designated and acting representative.

C. "Lot" or "parcel" means a parcel of land occupied or intended for occupancy by one main building together with its accessory buildings and which may include more than one platted lot.

D. "Person" means any individual, business association, partnership, corporation or other legal entity, to include owner, tenant, occupant, lessee, or otherwise.

E. "Roadway" means that portion of a street or highway improved, designed, or ordinarily used for vehicular travel or parking, exclusive of the berm or shoulder.

F. "Sidewalk" means a paved, concrete, or cement pathway intended for public pedestrian use and located parallel to a street or road, on either public right-of-way or a public use easement.

(Ord. 3709, 2023; Ord. 3492, 2013; Ord. 3040, 1997)

12.16.030 Snow and ice to be removed from sidewalks.

A. Every person owning, in charge or control of, or occupying as tenant any building or lot of land within the city which fronts on, abuts, or contains within a public use easement a sidewalk, shall remove and clear away, or cause to be removed and cleared away, snow, ice, slush, mud, or other impediment to safe and convenient foot travel from so much of said sidewalk as is in front of, abuts on, or is contained within said building or lot of land. It is further such person's duty to prevent accumulation of the same upon such sidewalks.

Snow, ice, slush, mud, or other impediment shall be removed from all sidewalks in the City within 24 hours following a snowfall.

B. When from freezing of water, snow or slush thereon, or by reason of such compaction resulting from the wear of foot travel or from any cause whatever, sidewalks are rendered dangerous, unsafe or difficult to the free passage of pedestrians, it shall be the duty of the owners or tenants of premises in front of, adjoining or containing within a public use easement such sidewalks to forthwith remedy such conditions by sprinkling sand or de-icing agents on the sidewalks, or chipping or by other safe and efficient means. (Ord. 3040, 1997; Ord. 2043 §2, 1979; prior code §28-3)

12.16.035 Depositing of snow and ice restricted. No person shall deposit or cause to be deposited any accumulation of snow or ice on or against a fire hydrant or on any sidewalk, pedestrian roadway crossing, roadway, roadway shoulder or berm, curb or gutter, any handicap parking space, any loading and unloading area of a public transportation system or any area designated for use by emergency vehicles for access. (Ord. 3040, 1997)

12.16.040 Violations: work done, liability therefore, civil penalty and collection.

A. In the event of the failure of any person responsible for clearing the sidewalk to clear away or treat with abrasives or suitable de-icing agents and subsequently clear away any snow, ice, slush, mud, or other impediment from any sidewalk as required by this ordinance, or cause this to be done, the director may, as soon as practicable after such failure, cause such work to be done at the expense of the property owner.
B. The director shall ascertain and keep a record of the exact date and costs of all work caused to be done in accordance with this section on account of each act or omission of each person; a legal description of the lot or lots fronting, abutting on or containing within a public use easement the sidewalks cleared along with the street address; and the identity of the owner(s) of the premises along with, when possible, any tenant(s), occupant(s) or lessee(s).
C. Each person whose act or omission makes it necessary that the director cause work to be done in accordance with this section shall be liable to the City for the cost of such work. The costs will be established and amended by City Council resolution after conducting a public hearing and may include a minimum fee plus an hourly rate based on the actual time for snow removal beyond one-half hour, pro- plus an administrative fee . Actual fees may exceed the minimum fee in instances in which actual costs are documented to exceed the minimum fee.
D. The director shall give each person written notice of the amount owed to the City as soon as practicable. The payment of such amount may be enforced through suit for collection or by levying an assessment on the premises or both.
E. In the event of assessment, the City Council shall annually pass and adopt a resolution levying an assessment and tax against each lot or parcel of land fronting, abutting on, or containing within a public use easement the sidewalks cleared under the order of the director and according to his/her report. Any such assessment or tax against the lot or parcel of real estate to which this sidewalk clearing service is furnished and for which payment is delinquent, shall become a lien on the real estate receiving the benefit. (Ord. 3526, 2014; Ord. 3501 §3, 2013; Ord. 3476 §5, 2012; Ord. 3462 §5, 2011; Ord. 3040, 1997)

12.16.045 Criminal penalties. Any person who violates any provision of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount of not less than twenty-five dollars or more than fifty dollars. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. There shall be no penalty of imprisonment for a violation of this chapter. (Ord. 3040, 1997)

12.16.050 Defective sidewalks—Accidents—Police report. Police officers shall report to the chief of police all defective or unsafe sidewalks or crossings, as well as the particulars of any accidents that may occur by reason of any defective or unsafe sidewalk or crossing and the names of witnesses and persons injured thereby. A copy of this report shall be given to the city engineer, who will in turn notify the owners of repairs required. (Ord. 2043 §3, 1979; prior code §28-6)

12.16.060 Defective sidewalks—Failure of owner to repair. Upon the refusal or neglect of the owner or tenant of any premises to remove obstructions from, or to make necessary repairs to, the sidewalks in front of or adjoining the

premises, and when, in the opinion of the city engineer, immediate repairs or the removal of obstructions are necessary to prevent accidents, the city engineer may immediately proceed with the same, and the full cost of such repairs or removal of such obstructions shall be assessed against the premises, as provided in Section 12.16.050. (Prior code §28-7).

12.16.070 Absence of notice to repair not a defense against fines or assessments. Absence of notice to owners or tenants to repair dangerous or unsafe sidewalks, or to remove obstructions therefrom, shall not constitute a valid excuse against the payment of any fine or damages or assessments by such owners or tenants; and nothing contained in any of the preceding sections shall be so construed as to release the owners or tenants of real estate from the duty of keeping the sidewalks in front of and adjoining their respective premises in a good and thorough state of repair, but such duty is hereby expressly enjoined and imposed upon all such owners or tenants. (Prior code §28-8).

12.16.080 Unlawful to drive over or deface or destroy sidewalks. It shall be unlawful for any person or persons to drive any vehicle of any kind upon, over or across any sidewalk, curb, parkway, or boulevard unless a driveway approach has been constructed. To mark, deface or destroy any sidewalk or curb, or cause the same to be done is also unlawful. (Ord. 2043 §4, 1979; prior code §28-9)

Chapter 12.17

Commented [SR52]: Moved to UDC Chapter 6.3

~~PARKING FACILITIES~~

~~12.17.010 Purpose~~
~~12.17.020 Applicability~~
~~12.17.030 Conflicting Provisions~~
~~12.17.040 Paving Construction Work – Application, Approval, and Permit Required~~
~~12.17.050 Paving Construction Work – Standards Compliance Required~~
~~12.17.060 General Requirements~~
~~12.17.070 Private Property Parking Facility Maintenance~~
~~12.17.080 Construction Requirements for Driveways~~
~~12.17.090 Construction Requirements for Parking Facilities~~
~~12.17.100 Private Property Paving Construction Work – Inspection by City~~

12.17.010 Purpose.

Commented [SR53]: Moved to UDC Chapter 6.3.1

~~This Parking Facility Ordinance is adopted for the purpose of setting forth design and construction requirements for driveways and parking facilities. (Ord. 3670, 2020)~~

12.17.020 Applicability.

Commented [SR54]: Moved to UDC Chapter 6.3.1

~~This code shall apply to the design and construction of driveways and parking facilities as required by:~~

~~A. Application and issuance of a Building Permit~~

~~B. Application and issuance of a Zoning Compliance Permit~~

~~C. Application and issuance of a Private Property Paving Permit.~~

~~D. Subdivision development~~

~~E. Townhome Exemption Development~~

~~(Ord. 3670, 2020)~~

~~12.17.030 Conflicting Provisions.~~

~~If any provisions of this Parking Facilities Ordinance conflict with any provisions or regulations of Federal, State or Local Government, then the most restrictive requirement(s) shall apply, to the extent permitted by law. Presence of conflict~~

within any portion of this ordinance shall apply and exist only within the portion in conflict and shall not nullify the entire ordinance. (Ord. 3670, 2020)

12.17.040 Paving Construction Work -- Application, Approval, and Permit Required.

Commented [SR55]: Moved to UDC Chapter 6.3.6.A

A. Application for permit(s) for private property paving construction work improvements specified in this chapter shall be made to the City Engineer on permit application form(s) provided for such permitting purposes.

B. Prior to approval of private property paving construction work improvements and issuance of permit(s) and payment of fee(s) as required by Missoula Municipal Code (MMC) Title 12 and established by resolution, staff shall review and determine that the proposed improvement are in conformance with the provisions and standards set forth in Missoula Municipal Code (MMC) and all other applicable federal, state and local regulations and requirements.

C. Upon approval of private property paving construction work, all applicable permits including but not limited to a Private Property Paving Permit and Storm Water Pollution Prevention Plan (SWPPP) Permit, shall be issued before paving construction work shall begin.

D. Private property paving construction work performed without required permit(s) shall be subject to an investigation fee which shall be equal to the fee amount for the required un-purchased permit(s) and in addition to the required permit(s) fee.

E. Paving construction work performed for driveways or parking facilities shall conform to this section and any deviation from this section shall be reviewed and approved by the City Engineer prior to any paving construction work activities. (Ord. 3670, 2020)

12.17.050 Paving Construction Work – Standards Compliance Required.

Commented [SR56]: Moved to UDC Chapter 6.3.5

A. All private property paving construction work for driveways and parking facilities shall be constructed in accordance with the most current published version of:

1. Missoula Municipal Code Title 20 - Zoning

2. Montana Pollutant Discharge Elimination System (MPDES)

3. Missoula City-County Air Pollution Control Program regulations. All contractors, engineers, architects and designers shall specifically examine and closely observe the requirements of the Missoula City-County Air Pollution Control Program Regulations, Chapter 8 - Fugitive Particulate during all phases of paving construction work.

B. In the event of conflict or discrepancy in the above documentation and related specifications, the most stringent shall prevail and govern. (Ord. 3670, 2020)

12.17.060 General Requirements.

Commented [SR57]: Moved to UDC Chapter 6.3.1

A. Driveways and parking facilities shall be laid out, designed and constructed in accordance with Missoula Municipal Code requirements, City Fire Department and Missoula City Public Works Standards and Specifications.

B. Accessible parking facilities shall be provided in accordance with current ADA regulations and Missoula Municipal Code requirements, and Missoula City Public Works Standards and Specifications.

C. All driveways and parking facilities shall be paved in the following scenarios:

1. New construction or change of use for residential dwelling, commercial, or industrial structures.

2. Additions or changes to existing structures that cause an increase in the parking requirement.

3. Where construction, reconstruction, or additions to parking facilities, driveways, or driveway approaches occur.

4. Where a Subdivision Exemption Affidavit for a boundary line relocation or family transfer is applied for and approved (except for a boundary line relocation that does not create additional building sites).

D. Sidewalks/walkways next to paved areas used for driving or parking shall be grade separated by a minimum of four (4) inches or separated by bollards or "B" curb. Pin-down curbs or wheel stops shall not be used to separate vehicular passages or parking areas from an at grade sidewalk/walkway.

E. Vehicular access is prohibited to unpaved areas, including but not limited to front, back or side yards, boulevards, secondary unpaved areas, and unimproved areas. Refer to the Missoula City-County Air Pollution Program Chapter 8 for specific exemptions from this requirement. These exemptions must also meet City of Missoula stormwater requirements.

F. Driveways serving as an approved fire apparatus access road shall meet the requirements of the International Fire Code, Appendix D as adopted by the City.

G. Parking facilities may include the street and/or alley for minimum backing distance. See City of Missoula Standard Drawings for reference.

H. Existing parking facilities shall not be altered to violate the requirements of this chapter including allowing vehicles to park in areas not designated for parking per the approved site plan.

I. All parking facilities shall provide a snow removal plan. The snow removal plan shall include the removal or storage of accumulated snowfall (snow) within the site.

1. The snow removal plan may include:
   a. Storage areas located on-site within landscape, lawn or turf areas,
   b. Storage areas located on site within excess parking areas i.e. parking areas exceeding the minimum required parking as required by Missoula Municipal Code (MMC) Title 20,
   c. Storage areas located off-site where snow may be legally disposed of.

2. Storage of snow is prohibited in the following locations that:
   a. Are within the right-of-way.
   b. Create a visibility obstruction as per Missoula Municipal Code (MMC) Title 12.
   c. Block fire hydrants or fire apparatus access roads.
   d. Reduce the quantity of parking spaces below minimum required.
   e. Inhibit vehicular movements.
   f. Adversely affects vehicular, pedestrian, or cyclist safety.
   g. Obstruct accessible parking spaces, routes, aisles, or other accessible site amenities.
   h. Obstruct entrances, fire exits, mailboxes, storage areas, trash enclosures or other accessible site amenities.
   i. Block Bike parking locations.
   j. Adversely affects an access easement.
   k. Obstruct stormwater facilities.
   l. Is within a riparian zone, wetlands, floodplain, levee, irrigation or other open waterway.
   m. Is within a private, public or community wellhead isolation or protection zone
   n. Violates the Clean Water Act (CWA) and / or the Montana Pollutant Discharge Elimination System (MPDES) and / or any other federal, state or local law / statute.

J. At the discretion of the City Engineer, when a building or development permit is needed, pedestrian Connections (sidewalks and/or trails) may be required to connect various facilities, including but not limited to:

1. Parking facilities with entrances to structures.

2. Multiple structures on the same site.

3. Structures to parking facilities, mailboxes, and garbage collection points.

4. Structures and/or parking facilities on adjacent parcels.

5. Existing or future pedestrian facilities (such as sidewalk or trails) in the right-of-way or a public access easement.

These connections, when required, shall meet all accessibility requirements when required by other local, state, or federal regulations.

K. At the discretion of the City Engineer, when a building or development permit is needed, Vehicular Connections (driveways or other drive lanes) may be required, including at, but not limited to, the following locations:

1. Adjacent destinations.

2. Internal roads to adjacent public or private roads.

3. Internal roads to each other.

4. For external connectivity requirements, refer to Chapter 12.10.

L. Exceptions to these standards: The Director or the City Engineer may grant deviations from these standards if there is documentation provided by the developer that justifies the requested changes.

(Ord. 3709, 2023; Ord. 3670, 2020)

12.17.070 Private Property Parking Facility Maintenance.

Commented [SR58]: Moved to UDC Chapter 6.3.5

A. Purpose: Many parking facilities are altered to a different configuration which does not comply with the original approved plans and may result in conflicts with zoning and engineering standards. Parking facility maintenance work, for the purpose of this chapter, shall include all work listed below on private or public parking facilities.
   1. Paving Work: Any surface material used in previously unpaved areas where vehicles may drive, park or be stored, and includes but is not be limited to; hot mix asphalt, Portland cement concrete, or any other material approved by the City Engineer.
   2. Repaving Work: The removal of any layer of existing asphalt, concrete or other surface material and the subsequent installation of a new paved surface.
   3. Reconstruction Work: One or more of the following work activities: installation or removal of existing parking facility surface and/or re-grading of the parking facility, stormwater drainage improvements, installation or maintenance of curb and gutter or the installation or maintenance of pedestrian access routes (including sidewalks).

B. Permit Requirements for Paving, Repaving or Reconstruction of Parking Facilities.

   1. A Parking Facility Paving Permit (see Title 15) is required for paving, repaving or reconstruction of a parking facility. The fee for this permit is set by resolution. The following is required for permit review:
      a. A site plan(s) drawn to a scale not greater than 1'=20'.
      b. If re-striping is to exactly match the existing layout then the applicant may submit copies of the original site plan(s) provided that the existing layout meets current standards.
      c. Show property lines.
      d. Show all existing structures and entrances.
      e. Show existing and proposed stormwater drainage, snow storage area(s), landscaping, lighting, etcetera.

f. Show existing and proposed pedestrian access routes (sidewalks) and driveways on private property, adjacent right-of-way, and easements.

g. Show parking space dimensions, layout, quantity, and configuration.
Show ADA accessible parking facilities on the site plan including signing, striping, ramps, access, etcetera.

C. Upon approval of a Parking Facility Paving Permit, all applicable additional permits, including but not limited to: Zoning Compliance Permit, Right-of-Way Permit, Accessibility Permit or Stormwater Permit, shall be issued prior to parking facility maintenance work commencement. (Ord. 3670, 2020)

12.17.080 Construction Requirements for Driveways.

Commented [SR59]: Moved to UDC Chapter 6.3.5

A. Right of way improvements, including but not limited to curb and gutter, curb cuts, driveway approaches, sidewalk, etc..., shall be installed and maintained in accordance with Missoula Municipal Code Chapter 12.10.

B. Driveways less than a 150 feet in length or not used as a fire access route, shall substantially follow natural contours and not exceed a maximum grade of 15% percent within 15 feet of a sidewalk or edge of pavement and a maximum of 20% beyond

C. Driveways that provide for fire access shall not exceed a maximum grade of 10%.

D. Driveway minimum paved width shall be 8 feet – 6 inches, or 12 feet if the driveway is greater than 150 feet in length. Fire code may require additional unobstructed width and turnouts.

E. Driveways exceeding 150 feet in length require an additional approval from the City Fire Marshall.

a. Proposals for driveways designs more than 150 feet in length must be approved and accompanied by written comments from the City Fire Marshall.

b. Dead-end driveways in excess of 150 feet shall have fire apparatus turnarounds, per IFC Appendix D, located within 150 feet of the building

c. Driveways over 150 feet must have an unobstructed vertical clearance of 13.5 feet and an unobstructed width of not less than 20 feet.

F. Driveways may use self-draining solid surface materials, such as interlocking block pavers, as long as the requirements of Rule 8.204 of the Missoula City-County Air Pollution Control Program and fire code are met.

G. Driveway paving construction work shall be completed along the entire length of a driveway starting at the existing adjacent intersecting street, alley or driveway approach

H. Stacked Parking and back out egress is only permitted for single family & duplex dwelling units.

I. Driveway shall be removed and landscaped if the existing adjacent parking space(s) are removed.

J. All existing and new parking shall comply with current standards when changes or alterations to the existing parking and/or approaches are made.

K. Curb and gutter are not required adjacent to driveways and/or parking facilities for any single family & duplex dwelling units.

L. Exceptions to these standards: The Director or the City Engineer may grant deviations from these standards if there is documentation provided by the developer that justifies the requested changes.
(Ord. 3709, 2023; Ord. 3670, 2020)

12.17.090 Construction Requirements for Parking Facilities.

Commented [SR60]: Moved to UDC Chapter 6.3.5

A. Right-of-way improvements, including but not limited to, curb and gutter, curb cuts, driveway approaches, sidewalk, etc... shall be in installed and maintained in accordance with Missoula Municipal Code Title 12.10.

B. For parking facilities with five (5) or more parking spaces, ADA accessible features and facilities, pedestrian routes, right-of-way infrastructure improvements and facilities (at grade, above grade and below grade) shall be designed by a licensed professional civil engineer or licensed professional architect and submitted plans shall be stamped by said licensed professional and included with the building permit application, zoning compliance permit application and / or any other permit application.

C. Parking facilities with five (5) or more parking spaces shall be constrained by poured-in-place concrete curbing, fencing, bollards, or other means to physically prevent access to unpaved areas. Adequate stormwater management is required in all cases. Pin-down curbs shall not be permitted as a substitute for poured-in-place sidewalk or curb and gutter.

D. Parking facilities with five (5) or more parking spaces shall be designed so that ingress and egress from the public street from and to a parking facility shall do so by driving forward except for parking spaces served directly off of an alley.

E. In certain situations, areas not designated and approved for parking shall be clearly marked by applying yellow epoxy paint to the curb or asphalt and signed appropriately and as required by the City Engineer as such i.e. "NO PARKING." Parking facilities shall have the most restrictive ADA compliance requirements applicable, based on each sites' use.

F. If utilizing an adjacent transit stop for a parking reduction per zoning 20.60.080, it shall be required to provide an ADA-compliant accessible route between the referenced transit stop and all on-site accessible routes.

G. Where a total of four (4) or fewer parking spaces, including accessible parking spaces, are provided on a site, identification of accessible parking spaces shall not be required. This rule also applies to each separate parking facility of four or fewer parking spaces on a site. However, all other requirements for accessible parking spaces, including access aisles, still apply. The combined total of all parking facilities on a site determines the number of accessible spaces to be signed.

H. For new facilities, loading and unloading of goods from vehicles shall occur on-site and shall not be accessed by backing into the private property from streets. All maneuvering, backing and turning movements shall be limited to on-site areas only and shall comply with the Missoula City Public Works Standards and Specifications.

(Ord. 3709, 2023; Ord. 3670, 2020)

12.17.100 Private Property Paving Construction Work – Inspection by City.

All private property paving construction work shall be inspected by a City inspector. All driveway and parking facility work shall be executed and completed to the satisfaction of the City inspector. All inspections are required to be scheduled no later than 7:00 AM the day of the inspection. The City of Missoula reviewed, stamped and approved set of plans shall be available on all construction site(s) at the time of any inspection(s). (Ord. 3670, 2020)

Commented [SR61]: Moved to UDC Chapter 6.3.6.C

Chapter 12.18

Sidewalk Cafés

Commented [SR62]: Revisions from COMSSM Chapter 7

Sections:

12.18.010 Purpose
12.18.020 Definitions

12.18.030 Liability of license holder and indemnification of the City of Missoula
12.18.040 Insurance
12.18.050 Rules, regulations, and specifications
12.18.060 Sidewalk Café Alcohol Addendum Required to Serve Alcoholic Beverages
12.18.070 License application required

12.18.080 Fees for sidewalk café licenses
12.18.090 Notice of violation; failure to comply
12.18.100. Violations and penalties

Section 1

12.18.010 Purpose

The City of Missoula has determined that the licensing of sidewalk cafés with dining as well as consumption of alcohol on the public sidewalk in conjunction with sidewalk café dining, will promote public interest by creating an attractive pedestrian environment for businesses during the day and evening and will foster a pleasant and distinctive ambience within the City of Missoula. The purpose of this chapter is to establish appropriate requirements to license and regulate this activity in order to ensure that the health, safety and welfare of the City are protected. (Ord. 3543, 2015)

Section 2

12.18.020 Definitions

As used in this chapter, the following terms shall have the meanings indicated:

A. ADJACENT BUILDING — the building whose principal façade fronts on the sidewalk where the sidewalk café is or is proposed to be located.

B. FRONTAGE ZONE – the area of the public right-of-way between the ~~pedestrian zone~~ sidewalkand the adjacent private property.

C. FURNITURE ZONE – the area located between the ~~Pedestrian Zone~~sidewalk and the ~~Roadway~~ street zone that is~~and are~~ hardscaped with street trees planted in wells, super pits, structured soils, suspended pavement systems or other methods to ensure adequate soil volume.

D. PARKING LANE – the area outside the flow of traffic for vehicles to stop, park, or temporarily load/unload.

E. PEDESTRIAN ZONE – the area between private property and the curb, comprised of the frontage zone, sidewalk, and boulevard/furniture zone~~hardscaped section of sidewalk zone where pedestrians move without obstructions (such as outdoor seating, trees/landscaping, garbage cans, sandwich boards, bike racks, etc)~~.

~~B.~~F. PERSON(S) / APPLICANT(S) — any individual, partnership, corporation, association or other entity.

~~C.~~ G. PRINCIPAL FACADE / STREET FRONTAGE — that portion of the façade of a building which fronts on a street.

~~D. REQUIRED PEDESTRIAN PASSAGEWAY — an area of sidewalk, or pedestrian walkway parallel to the principal façade, that shall be at least a five (5') feet wide unobstructed width extended in a straight line parallel to the public right of way and extending the full length of the property to be used as a sidewalk café under the authority of this section.~~

~~E.~~ H. RETAIL FOOD ESTABLISHMENT — the establishment actually located within the adjacent building for which a current retail food establishment business license has been issued and has all approvals from the County Health Department for food service.

~~F.~~ I. SIDEWALK - That portion of the pedestrian zone ~~public right of way~~ between the curb lines or the lateral lines of a roadway and the adjacent property lines and that which is designated, utilized, maintained unobstructed, and improved for pedestrian travel.

~~G.~~ J. SIDEWALK CAFE or CAFE — a retail food establishment which:

1. Serves food and beverages to the public at tables located on the portion of the public sidewalk which lies within the area bounded by the street, the principal façade of the adjacent building, and the imaginary perpendicular lines running from the outer edge of such principal façade to the street; and
2. Meet all ADA requirements per the most recent adopted guidelines and
3. Is not enclosed by fixed walls or ceilings. (Ord. 3543, 2015)

Section 3

12.18.030 Liability of license holder and indemnification of the City of Missoula

A. The person, persons, or business to whom a license for a sidewalk café has been issued, as well as any successors or assigns to the persons or business, shall be liable for any and all damage to persons or property that arise out of the use of the public sidewalk for a sidewalk café, including any injury or damage to public right-of-way and / or public sidewalks.

B. The person, persons, or business to whom a license for a sidewalk café has been issued, as well as any successors or assigns to the persons or business, shall indemnify and hold the City of Missoula harmless for any loss, damage, or injury or expense arising out of any claim or cause of action instituted or commenced by any person or persons arising out of the issuance of such license or as a direct or indirect result of the operation of such sidewalk café. (Ord. 3543, 2015)

Section 4

12.18.040 Insurance

Prior to the issuance of a license, the applicant for a license shall present to the City of Missoula a certificate of insurance for comprehensive general liability, naming the City of Missoula as additional insured, for combined single limits of no less than seven hundred fifty thousand ($750,000.00) dollars per occurrence and one million five hundred thousand ($1,500,000.00) dollars general aggregate and umbrella limits of one million ($1,000,000.00) dollars. (Ord. 3543, 2015)

Section 5

12.18.050 Rules, regulations and specifications

A sidewalk café authorized and operating pursuant to this chapter shall comply with all of the following rules and regulations, and such others as may be adopted by the City-County Health Department.

A. Sidewalk cafés may be located ~~on public sidewalks~~within the public right-of-way, including the frontage zone, furniture zone, and/or parking lane, adjacent to the retail food establishment which operates the outdoor dining subject to the following restrictions:
   1. The lateral extent of sidewalk cafés shall extend no further than the actual principal façade of the operating restaurant.
   2. Sidewalk café operations shall provide not less than ~~five~~ six contiguous (~~5'~~6') feet of ~~public sidewalk~~pedestrian zone clear of obstructions to allow unimpeded pedestrian traffic.
   3. Sidewalk café operations located next to the curb shall not impede access to: parked vehicles, parking meters, bicycle racks, garbage receptacles, traffic signal poles, fire hydrants, utility structures, trees or tree grates, planters, or any other feature that requires public access and / or maintenance.
   4. Sidewalk café operations, at street intersections and street / alley intersections, shall not obstruct the clear sight distance as per, MMC 12.28.110 – Visibility Obstructions.
   5. Sidewalk café operations at street intersections shall not impede or obstruct pedestrian access including such access as required by the Americans with Disabilities Act (ADA).

B. Contains readily removable tables and chairs of a type used for outdoor use, Sidewalk cafés shall be operated and maintained in accordance with the approved sidewalk café plan by the same person who operates and maintains the abutting retail food establishment. See MMC 12.18.060 and MMC 12.18.070 of this section for minimum plan submittal requirements.

C. The placement of furniture, apparatus, decoration or object used in connection with the operation of the sidewalk café in relation to any fire hydrant, plug or standpipe permanent fixture shall be approved by specific written authorization of the Fire Marshall based upon his/her review of the sidewalk café plan.

D. No furniture, apparatus, decoration or object used in connection with the operation of the sidewalk café shall be located in such a way so as to impede the safe and speedy access (ingress / egress) from any building or structure.

E. No furniture, apparatus, decoration or object used in connection with the operation of the sidewalk café shall be located in or project or protrude into the ~~required pedestrian passageway~~pedestrian zone. Additionally, such encumbrances shall at no time pose a safety hazard to the general public.

F. Any table service provided at the sidewalk café shall be provided by persons engaged or employed for that purpose and shall be furnished to seated patrons only. Table service is not required, and retail food establishments that do not provide table service may operate sidewalk cafés in which patrons carry their food from inside the premises to tables located in the sidewalk café.

G. The public sidewalk area utilized by the sidewalk café shall be kept clean and free of litter and shall be washed regularly as needed. Covered trash receptacles shall be provided and regularly maintained (emptied) by the retail food establishment operator.

H. All solid waste / refuse shall be picked up / swept up and placed in a trash receptacle. No food, trash or other solid waste / refuse shall be washed or deposited into the stormwater system or state waters.

I. Signage for sidewalk cafés shall be considered part of the signage approved for the retail food establishment and shall comply with MMC 20.75 – Missoula Sign Ordinance.

J. Noise from the sidewalk café shall be in conformance with MMC 09.30 – Noise Control.

K. Exterior lighting of the sidewalk café shall be in conformance with MMC 08.64 – Missoula Outdoor Lighting Ordinance.

L. Sidewalk cafés shall be licensed to operate between the hours of 07:00 a.m. to 12:00 a.m.

M. When the sidewalk café is not operating, the license holder may store, for no more than seventy-two (72) hours, furniture or items used in connection with the operation of the sidewalk café in a manner to minimize the intrusion of those items into the public right-of-way. All such materials and items shall ~~be~~ not be stored in any entrance way or doorway so as to not impede access, ingress or egress to the structure, in a manner subject to approval by the Fire

Marshall.

N. No food may be prepared or stored in the sidewalk café or outside the adjacent building.

O. The City reserves the right and power to temporarily order the discontinuation of the operation of public outdoor dining at any time due to anticipated or actual problems or conflicts in the use of the public sidewalk area. These situations include, but shall not be limited to festivals, parades, marches, road races, repairs to the street or sidewalk, or any other emergencies occurring in the area. To the extent possible, the licensee shall be given prior written notice of the time period during which the operation of outdoor dining will not be licensed by the City, but failure to give notice shall not affect the right and power of the City to prohibit outdoor dining operation at any time.

P. The licensee may, at their discretion, restrict smoking within the boundaries of the sidewalk café.

~~P.~~Q. Sidewalk cafés located in a parking lane in any area managed by the Missoula Parking Commission [MPC] shall be reviewed and approved by the MPC. (Ord. 3543, 2015)

Section 6

12.18.060 Sidewalk Café Alcohol Addendum Required to Serve Alcoholic Beverages

In order to serve alcoholic beverages in a sidewalk café the applicant must have an existing liquor license or have an application pending for a liquor license with the Montana Department of Revenue (MDOR) that meets the following requirements throughout the term of the sidewalk café alcohol addendum.

A. The MDOR must approve the application prior to final approval by the City.
   1. The application must be submitted to the City of Missoula Public Works and Mobility for preliminary review.
   2. The City will then submit the preliminarily approved application to the MDOR for review.
   3. MDOR will review the application and if it meets their requirements will conditionally approve the floor plan so long as the City will grant the applicant conditional use or possessory interests in the sidewalk
   4. Final approval of the application by the City will constitute a conditional use/possessory interest of the sidewalk
   5. The City's final approval will be forwarded to the MDOR prior to MDOR issuance of its final approval

B. The MDOR will issue a final approval of the sidewalk service area if the area meets all State requirements and the license has been approved by the City. The applicant shall maintain the sidewalk café area to the requirements within Illustration 1 below. This ordinance amends 12.30.050 and is only applicable to the standards set forth herein.
   1. Prior to the issuance of this addendum by the MDOR, the applicant shall provide proof that he/she has obtained all necessary licenses required by the State of Montana, the county of Missoula as well as the City of Missoula. Further, the applicant shall show that he/she will comply with all the rules and regulations pertaining to alcoholic beverages as promulgated by all governing bodies; state, county and city.
   2. The applicant shall be in conformity with all MDOR requirements. The applicant shall have specific approval from the Montana Department of Revenue to extend their licensed premises into the sidewalk café.
   3. When in a sidewalk café with an alcohol addendum, customers may consume alcohol provided to them by the retail food establishment. Customers may not consume alcohol they have carried into the service area, even if in a sidewalk café with a sidewalk café alcohol addendum.

C. Requirements for a sidewalk café to be permitted to serve alcoholic beverages
   1. Contains readily removable tables and chairs of a type used for outdoor use, temporary railings and/or planters;
   2. If two service areas are separated by the ~~required pedestrian passageway~~pedestrian zone, they shall have a temporary connecting link such as marks in the sidewalk or a floor mat to identify the are used by persons engaged or employed for the purpose of providing services to the patrons and
   3. The boundaries of the sidewalk café shall be demarcated through the use of a temporary barrier, such as a balustrade, cordon, railing, planter or other means acceptable to the MDOR. Any such temporary demarcation options must be easily removed and clearly set the boundary of the area of the right-of-way where a licensee may serve alcohol.
   4. The temporary barrier shall include way-finding at each end to direct visually impaired pedestrians in to the ~~required pedestrian passage way~~pedestrian zone and.
   5. Meet all ADA requirements per the most recent adopted guidelines and
   6. Is not enclosed by fixed walls or ceilings. (Ord. 3543, 2015)

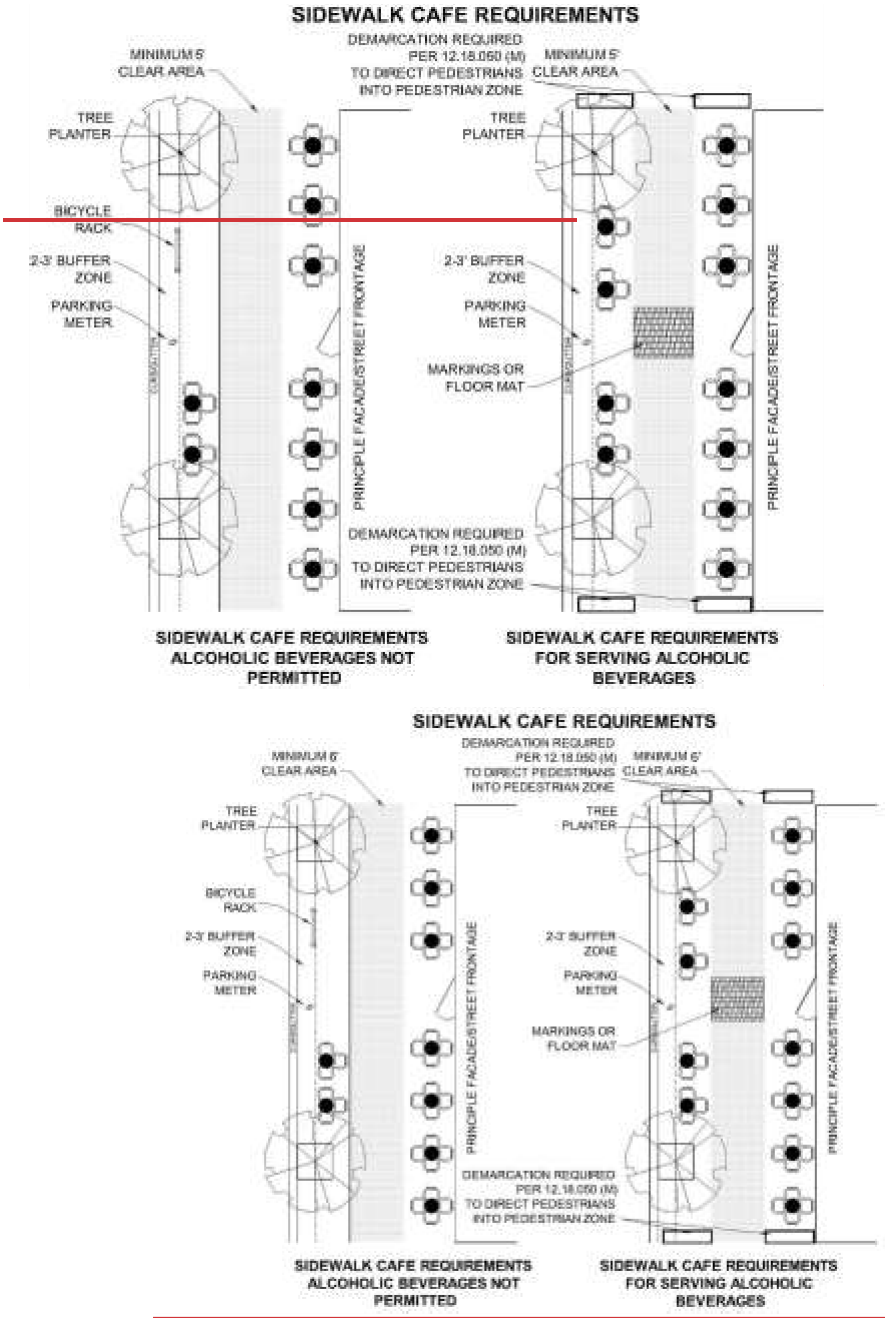
SIDEWALK CAFE REQUIREMENTS
MINIMUM 5' CLEAR AREA
DEMARCATION REQUIRED PER 12.18.050 (M) TO DIRECT PEDESTRIANS INTO PEDESTRIAN ZONE
TREE PLANTER
BICYCLE RACK
2-3' BUFFER ZONE
PARKING METER
PRINCIPLE FACADE/STREET FRONTAGE
MARKINGS OR FLOOR MAT
SIDEWALK CAFE REQUIREMENTS ALCOHOLIC BEVERAGES NOT PERMITTED
SIDEWALK CAFE REQUIREMENTS FOR SERVING ALCOHOLIC BEVERAGES
SIDEWALK CAFE REQUIREMENTS
MINIMUM 6' CLEAR AREA
DEMARCATION REQUIRED PER 12.18.050 (M) TO DIRECT PEDESTRIANS INTO PEDESTRIAN ZONE
TREE PLANTER
BICYCLE RACK
2-3' BUFFER ZONE
PARKING METER
PRINCIPLE FACADE/STREET FRONTAGE
MARKINGS OR FLOOR MAT
SIDEWALK CAFE REQUIREMENTS ALCOHOLIC BEVERAGES NOT PERMITTED
SIDEWALK CAFE REQUIREMENTS FOR SERVING ALCOHOLIC BEVERAGES

Illustration 1

Section 7

12.18.070 License application required

The applicant shall submit a license application to The City of Missoula Public Works and Mobility that includes the following:

A. Name of business
B. Address of business
C. Owner and tenant if applicable
D. Contact telephone number of owner and business
E. A site plan showing the following information:
    1. Drawn to a scale and not greater than 1”=20’
    2. Plan showing the floor plan within the structure and the proposed sidewalk serving area if the applicant wishes to serve alcoholic beverages in the area of the sidewalk café.
    3. Building façade and dimension (width facing sidewalk)
    4. All access, ingresses and egresses, to the building
    5. Sidewalk location and width
    6. Curb location
    7. Any / all existing obstructions on public sidewalk such as parking meters, trees and tree planters, bike racks, signs, utility poles, fire hydrants, etc.
    8. Proposed location of furniture, demarcation and delineation of the service area (if applicable for serving alcohol), garbage collection, signs etc.
    9. Storage area for furniture per fire code
F. Proof of general liability insurance (Ord. 3543, 2015)

Section 8

12.18.080 Fees

Fees must be established by City Council resolution after conducting a public hearing. Initial fees will be added to the regular business license which will be amended at the time of The Sidewalk Café license application final approval. This license fee will not be prorated. License renewal fees will be added to the annual business licensing fee at the time of renewal. (Ord. 3543, 2015)

Section 9

12.18.090 Notice of violation; failure to comply

Upon determination by City of Missoula Public Works and Mobility or Police Department that a licensee has violated one or more of the provisions of this chapter one of the following corrective measures must be taken:,

A. If the violation is regarding Pubic Safety or Americans with Disabilities Act (ADA) including but not limited to: completely or partially blocking the pedestrian clear zone, restricting emergency access and egress from doorways or parked cars, etc. corrective activity must be done immediately upon verbal notice. In the event the licensee fails or refuses to correct such violation immediately after receiving the notice of violation, the licensee's sidewalk café license may be revoked.

B. If the violation is not considered a public safety or ADA issue then Public Works and Mobility staff shall give written notice, by Certified Letter, to the licensee to correct such violation. In the event the licensee fails or refuses to correct such violation within seventy-two (72) hours of receiving the notice of violation, the licensee's sidewalk café license may be revoked.

C. Any licensee cited for three (3) or more violations of this chapter over a one (1) year period, even if corrected, may have his or her license revoked and / or not reinstated at renewal time. (Ord. 3709, 2023; Ord. 3543, 2015)

Section 10

12.18.100 Violations and penalties

In addition to the revocation penalty set forth in Section 12.18.100, any person convicted of a violation of any of the provisions of this chapter shall, upon the 3rd notice within a period of one calendar year, be subject to revocation of their license. They may also be subject to a fine of at least two hundred ($200.00) dollars and not exceeding five hundred ($500.00) dollars, for each offense. Each violation of a section or subsection of this chapter, and each day that a violation continues, shall constitute a new and separate violation. No violation of this section shall constitute an offense subject to incarceration. (Ord. 3543, 2015)

~~**Chapter 12.20**~~

~~**DRIVEWAYS (Repealed)**~~

~~**12.20.010 Repealed.** (Ord. 3244, 2004; Ord. 2043 §5, 1979; prior code §28-14).~~

~~**12.20.020 Repealed.** (Ord. 3244, 2004; Ord. 2043 §6, 1979; prior code §28-15).~~

~~**12.20.030 Repealed.** (Ord. 3244, 2004; Prior code §28-16).~~

~~**12.20.040 Repealed.** (Ord. 3244, 2004; Ord. 2043 §7, 1979; prior code §28-17).~~

~~**12.20.050 Repealed.** (Ord. 2043 §8, 1979; prior code §28-20).~~

~~**12.20.060 Repealed.** (Ord. 3244, 2004; Prior code §28-18).~~

~~**12.20.070 Repealed.** (Ord. 3244, 2004; Ord. 2043 §8, 1979; prior code §28-19).~~

~~**12.20.080 Repealed.** (Ord. 3244, 2004; Ord. 1991, 1979; prior code §28-21).~~

~~**12.20.090 Repealed.** (Ord. 3244, 2004; Ord. 1992, 1979; prior code.§28-22).~~

12.20.100 Repealed. (Ord. 3244, 2004; Ord. 2043 §10, 1979; prior code §28-23).

12.20.110 Repealed. (Ord. 3244, 2004; Prior code §28-24) .

12.20.120 Repealed. (Ord. 3244, 2004; Prior code §28-25).

12.20.130 Repealed. (Ord. 3244, 2004; Prior code §28-26).

12.20.140 Repealed. (Ord. 3244, 2004; Prior code §28-27).

12.20.150 Repealed. (Ord. 3244, 2004; Prior code §28-28).

12.20.160 Repealed. (Ord. 3244, 2004; Ord. 2169 §1, 1980; prior code §28-29).

12.20.170 Repealed. (Ord. 3244, 2004; Prior code §28-30).

Title 12.22 Repealed

12.22.010 Repealed (Ord. 3670, 2020; Ord. 3587, 2017; Ord. 3571, 2016; Ord. 3555, 2015; Ord. 3424, 2010)

12.22.020 Repealed (Ord. 3670, 2020; Ord. 3587, 2017; Ord. 3571, 2016; Ord. 3555, 2015; Ord. 3424, 2010)

12.22.030 Repealed (Ord. 3670, 2020; Ord. 3587, 2017; Ord. 3571, 2016; Ord. 3555, 2015; Ord. 3424, 2010)

12.22.035 Repealed (Ord. 3670, 2020; Ord. 3587, 2017; Ord. 3571, 2016; Ord. 3555, 2015)

12.22.040 Repealed (Ord. 3670, 2020; Ord. 3587, 2017; Ord. 3571, 2016; Ord. 3555, 2015; Ord. 3492, 2013; Ord. 3424, 2010)

12.22.050 Repealed (Ord. 3670, 2020; Ord. 3587, 2017; Ord. 3571, 2016; Ord. 3555, 2015; Ord. 3492, 2013; Ord. 3424, 2010)

12.22.060 Repealed (Ord. 3670, 2020; Ord. 3587, 2017; Ord. 3571, 2016; Ord. 3555, 2015; Ord. 3492, 2013; Ord. 3424, 2010)

12.22.070 Repealed (Ord. 3670, 2020; Ord. 3587, 2017; Ord. 3571, 2016; Ord. 3555, 2015; Ord. 3492, 2013; Ord. 3424, 2010)

12.22.080 Repealed (Ord. 3670, 2020; Ord. 3587, 2017; Ord. 3571, 2016; Ord. 3555, 2015; Ord. 3492, 2013; Ord. 3424, 2010)

12.22.090 Repealed (Ord. 3670, 2020; Ord. 3587, 2017; Ord. 3571, 2016; Ord. 3555, 2015; Ord. 3492, 2013; Ord. 3424, 2010)

12.22.095 Repealed. (Ord. 3670, 2020; Ord. 3587, 2017)

12.22.100 Repealed (Ord. 3670, 2020; Ord. 3587, 2017; Ord. 3571, 2016; Ord. 3555, 2015; Ord. 3492, 2013; Ord. 3424, 2010)

12.22.110 Repealed (Ord. 3670, 2020; Ord. 3587, 2017; Ord 3571, 2016; Ord. 3555, 2015; Ord. 3424, 2010)

12.22.120 Repealed (Ord. 3670, 2020; Ord. 3587, 2017; Ord. 3571, 2016; Ord. 3555, 2015; Ord. 3492, 2013; Ord. 3424, 2010)

12.22.130 Repealed (Ord. 3670, 2020; Ord. 3587, 2017; Ord. 3571, 2016; Ord. 3555, 2015; Ord. 3492, 2013; Ord. 3424, 2010)

12.22.140 Repealed (Ord. 3670, 2020;Ord. 3587, 2017; Ord. 3571, 2016)

Chapter 12.24

EXCAVATIONS

Sections:

12.24.005 Definitions.
12.24.010 Permit--Required.
12.24.020 Permit--Application.
12.24.030 Permit--Application--Fee.
12.24.35 Permit fee exceptions.
12.24.36 Investigation Fees; Work without a Permit.
12.24.37 Permit Fee Refunds.
12.24.040 Construction Specifications.
12.24.045 Repealed
12.24.050 Repealed
12.24.060 Contractor Responsibility and Public Safety.
12.24.070 Repealed
12.24.080 Repealed
12.24.090 Repealed
12.24.100 Failure to complete excavation and repair surface --Inspection and completion of repair by city.
12.24.110 Business license and liability insurance requirement.
12.24.120 Surety bond requirements.
12.24.130 Liability of city.
12.24.140 Assessments for damaging or opening pavement.
12.24.150 Requirements for non-municipal utilities
12.24.160 Repealed
12.24.170 Cleaning up of excavation site.
12.24.180 Requirements for special projects
12.24.190 Violation--Penalty.

12.24.005 Definitions.

Commented [SR63]: Moved to UDC Chapter 6

Commented [SR64]: Moved to UDC Chapter 8

A. Excavation shall be defined as the removal, replacement or the change in grade of any soils or finish surfacing materials on public or private property for the purpose of installing, repairing, maintaining, replacing, removing or investigating underground facilities including but not limited to monitor wells, water, sewer, gas, electric, telephone, television cable, utility poles, and those underground items necessary for their function.

B. Excavator shall be defined as only those persons, firms or corporations who are authorized, licensed and bonded as required by Section 5.08 M.M.C. to excavate by the city. (Ord. 3244, 2004; Ord. 3014, 1997)

12.24.010 Permit--Required. It shall be unlawful for any person, firm or corporation to make an excavation without being a licensed and bonded excavator, and first obtaining an excavation permit from Public Works and Mobility. Permits shall be required for the following:

Commented [SR65]: Moved to UDC Chapter 6.2.1.F

A. Installing, maintaining, replacing, removing, repairing or investigating water or sewer lines currently connected or proposing connection to a public utility in the streets, alleys, public rights-of-way, easements, and private property.

B. Excavating in any street, alley, public utility easement or public right-of-way.

C. Installing, maintaining, replacing, removing, repairing or investigating water or sewer lines owned or operated by the City of Missoula. Exceptions:

1. Landscaping sprinklers and irrigation systems shall only require an excavation permit if the installation is in a State Route right-of-way or if excavation is at point of source, such as curbstop. Repair of landscaping

sprinkler and irrigation system does not require an excavation permit.

2. The installation, maintenance, removal, repair or replacement of utility poles shall only require an excavation permit if the owner of the pole does not have a written agreement with the City of Missoula for the relocation of their utility poles.

(Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Ord. 2043 §11, 1979; prior code §28-32).

12.24.020 Permit--Application.

Commented [SR66]: Moved to UDC Chapter 6.2.1.F

A. Application shall be made to Public Works and Mobility by the excavator stating the purpose for which the excavation is to be made, including locations, depth, width, length and amount of time such excavation is to remain open or unfilled.

B. Applicant shall file, upon request, with v for approval, one drawing of all proposed improvements before permit is issued.

C. Before issuance of a permit the excavator shall contact all underground facilities for their locations as stated in M.C.A. 69-4-502. The excavator shall have a location number from the Underground Location Center before a permit is issued. In addition to public utility lines, the excavator shall locate and protect private utility lines such as water and sewer services and private irrigation lines.

D. Before issuance of an excavation permit all fees shall be paid. The fees to be paid may include but not limited to a: General Obligation Bond, pavement assessment fees, contract for sewer, sewer development, Special Improvement District, and rebate fees.

E. Permits shall expire by limitation and become null and void if work authorized is not commenced within one hundred and eighty (180) calendar days after date of issuance. Also, permits shall expire by limitation and become null and void if work authorized by the permit is suspended or abandoned by the excavator for more than 180 calendar days. Extension of time on permits may be granted by the Public Works and Mobility Director, or a designated agent.

F. Excavations shall be inspected and perform to the approval of the Director. Public Works and Mobility staff may at any time, when excavations are not performed in accordance with this chapter, have authority to order the excavation contractor to suspend work until excavation conforms with the specifications set forth in this chapter. Inspections shall be required to meet all federal, state, and local requirements.

G. No excavation shall extend over half the width of any traveled portion of the street right-of-way section at any time, except under written authorization of the Public Works and Mobility Director, or a designated agent.

H. All excavators installing Septic Tank Effluent Pump (STEP) systems shall be required to be certified by the Public Works and Mobility Director a designated agent to do work on STEP systems.

I. Issuance of a permit will require that the excavator shall have a competent person, as defined by the Federal Occupational Safety and Health Administration (OSHA).

J. Whenever an excavator is required to remove curb or sidewalk when reinstalling, replacing, or repairing utility lines, they shall be allowed to, and required to reinstall such curbs and sidewalks as provided in this chapter:

1. The concrete curb and sidewalk work shall conform to all city regulations
2. The excavator shall indicate on the excavation permit application their intention to perform any concrete curb or sidewalk replacement in the public right-of-way.

The excavation permit shall serve as a permit to remove and replace concrete curb and sidewalk within the limits of the excavation work authorized by the excavation permit

K. Pavement Marking. All pavement marking removed or damaged by excavation work shall be replaced with the same type of material used in the original markings, or those approved by Public Works and Mobility staff. The work must meet the installation and material specifications commensurate with the type of marking used. Thermoplastic pavement marking may be replaced with plastic inlay tape or an approved equal.

L. Warranty. The holder of the permit shall warrant the work in the public right-of-way to be free from backfill settlement and surface condition for two years following the completed, accepted work. Warranty starts on date project is accepted by Public Works and Mobility staff.

(Ord. 3709, 2023; Ord. 3679, 2021; Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Ord. 2043 §12, 1979; prior code §28-33).

12.24.030 Permit--Application--Fee.
Permit fees are based on the average direct and indirect costs to provide plan checking, permit administration, field inspection, record management, warranty inspection, and Public Works and Mobility for excavations. The fees for the following excavation permits shall be established and amended by City Council resolution after conducting a public hearing.

A. Excavation permits for sanitary sewer
B. Excavation permits for water
C. Excavation permits for stormwater
D. Excavation permits for miscellaneous excavations including sewer, water, storm drain, gas, electric, phone, and cable television.

Revenue from these fees shall be credited to the appropriate City fund.

(Ord. 3709, 2023; Ord. 3679, 2021; Ord. 3526, 2014; Ord. 3501 §4, 2013; Ord. 3492, 2013; Ord. 3476 §6, 2012; Ord. 3462 §6, 2011; Ord. 3433 §4, 2010; Ord. 3384 §4, 2008; Ord. 3350 §4 2007; Ord. 3323 §4, 2006; Ord. 3298, 2005; Ord. 3259 §3, 2004; Ord. 3244, 2004; Ord. 3227, 2003; 3014, 1997; Ord. 2380 (part), 1984; Ord. 1846, 1977; prior code §28-34).

12.24.35 Permit fee exceptions:
A. Any excavator doing work for the City may be exempted from permit fees when authorized by the Public Works and Mobility Director.

B. Work performed by the City is exempt from permit fees.
(Ord. 3709, 2023; Ord. 3492, 2013; Ord. 3244, 2004)

12.24.36 Investigation Fees; Work without a Permit. Whenever any work for which a permit is required by this ordinance has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this ordinance. The payment of such investigation fee shall not exempt any person from compliance with all provisions of this ordinance nor from penalty prescribed by Section 12.24.190.

Exception: During the period of time when city offices are closed, emergency repairs may be performed by the excavator before obtaining a permit. The permit shall be obtained by the excavator within eight working hours after city offices are open. (Ord. 3244, 2004; Ord. 3014, 1997)

12.24.37 Permit Fee Refunds. Refunds or credits of excavation permit fees will be given with Public Works and Mobility Director or designee approval as long as no work has commenced. The refund process will be consistent with city policy. (Ord. 3709, 2023;Ord. 3628, 2019; Ord. 3244, 2004; Ord. 3014, 1997)

12.24.040 Construction Specifications. All work shall conform to the applicable sections of the Montana Public Works Standard Specifications (MPWSS), latest edition; City of Missoula Public Works Manual, City of Missoula policies, regulations, requirements, addendums, or contract specification approved by the City Engineer; or as specified in this ordinance. Whenever there is a conflict between MPWSS and the city ordinance, the stricter specification shall govern. Whenever there is a conflict between MPWSS and approved contract specifications, the approved contract specifications shall govern. (Ord. 3679, 2021; Ord. 3244, 2004; Ord. 3014, 1997; Ord. 2055, 1979; prior code §28-35).

12.24.045 Repealed (Ord. 3709, 2023; Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997)

12.24.050 Repealed (Ord. 3709, 2023; Ord. 3244, 2004; Ord. 3014, 1997; Prior code §28-36).

12.24.060 Contractor Responsibility and Public Safety.

A. Responsibility: The Excavator in accepting and acting under the excavation permit granted under the provisions hereof agrees to assume full responsibility for injury to persons or losses or damage to property incurred by reason of, or arising

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out of, any act or omission of such excavation or to properly barricade, guard, and warn the public of such excavation.

B. Traffic Control: Prior to the issuance of a permit the excavator shall provide a traffic control plan (as defined in the Manual on Uniform Traffic Control Devices Part VI of the U.S. Department of Transportation Federal Highway Administration, latest edition) or a traffic control plan number from the *City of Missoula Guidelines for Traffic Control* if applicable, and gain approval of the traffic control plan from Public Works and Mobility staff. The excavator shall be responsible for maintaining safe travel corridors for all vehicle, bicycle and pedestrian traffic as part of the approved traffic control plan. Traffic control devices shall be installed in accordance with the approved traffic control plan before construction or maintenance operations, and shall be properly maintained and operated during the time such special conditions exist. They shall remain in place only as long as they are needed and shall be immediately removed thereafter. Where operations are performed in stages, there shall be in place only those devices that apply to the conditions present. Devices or signs that do not apply to existing conditions shall be removed, covered or turned so as to not be readable by oncoming traffic. Barricade and sign supports shall be constructed and erected in a proper manner. Weeds, trees shrubbery, construction materials, equipment, spoil piles etc., shall not obscure any traffic control device. Excavated material that is stockpiled on city right-of-way shall be safeguarded by means of flashing barricades and proper traffic regulatory signing. All safeguarding of excavation projects must conform to the Manual on Uniform Traffic Control Devices for Streets and Highways, U.S. Department of Transportation Federal Highway Administration.

C. Excavation Safety: All work covered in this ordinance shall meet current OSHA Safety and Health Standards. Failure to comply with OSHA rules may result in an immediate loss of the excavation permit. The excavator shall take all necessary precaution to prevent injury to workers and others, and to protect any and all adjacent private and public property. This shall include protecting the stormwater system, sidewalks, curbs, sprinkler systems, traffic loops, traffic signals, etc. The excavator shall be required to have a competent person, as defined by OSHA, on site during all work associated with the Excavation Permit. The excavator shall be solely responsible for all safety related to the excavation. (Ord. 3709, 2023; Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Prior code §28-37).

12.24.070 Repealed (Ord. 3709, 2023; Ord. 3244, 2004; Ord. 3014, 1997; Prior code §28-38).

12.24.080 Repealed (Ord. 3709, 2023; Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Prior code §28-39).

12.24.090 Repealed (Ord. 3709, 2023; Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Prior code §28-40).

12.24.100 Failure to complete excavation and repair surface --Inspection and completion of repair by city.

A. If inspection of excavation, once commenced, finds methods being practiced not conforming to this chapter, a correction notice will be issued by Public Works and Mobility staff listing items or procedures not meeting requirements of this chapter. If corrections listed on notice are not brought to conformity with this chapter, a stop work order for the project will be issued. Work on the project shall only resume after a meeting with the excavator, Public Works and Mobility Director or designee, and the Public Works and Mobility staff member who issued the stop work order. If the project is not brought into conformity with this chapter, the Public Works and Mobility Director shall cause the excavation to be placed in a condition that does meet the requirements of this chapter. Costs shall be assessed to the excavator's bond under Section 12.24.120, with action against the excavator's city business license, under Section 5.08.120. (Ord. 3709, 2023; Ord. 3679, 2021, Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Prior code §28-41).

12.24.110 Business license and liability insurance requirement. At the time of making excavation business license application, the applicant shall file with the City Treasurer evidence of liability insurance as required by Section 5.08.150. The Development Services staff shall verify that the excavator has obtained a city business license prior to issuing a permit for the excavation. (Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Ord. 2043 §13, 1979; prior code §28-43).

12.24.120 Surety bond requirements.

A. An applicant for a permit must also file a surety bond as required in Section 5.08.140 in the principal amount of not less than the contract amount, but in no case, less than twenty thousand dollars. In addition to the requirements of Section 5.08.140, the bond shall also be conditioned upon the proper backfill of the excavation, proper installation of any utility service or main line and restoration of surface in accordance with the provision of this chapter. Such bond shall be required of all applicants for permits without exception.

B. Any evidence of settlement of backfill or deterioration or failure of excavator's patch applied to the surface in the public right-of-way within two years after completion and acceptance of the work shall be deemed conclusive evidence of

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defective backfill or surface restoration by the permittee, excavator and in such event, after three days' notice to the excavator and their bondsman, the Public Works and Mobility Director or a designated agent may elect to re-excavate and backfill properly or to repair defective surface restorations, or both, in accordance with the provisions of this chapter, and the costs thereof shall be assessed against the bond provided for by this section and bond filed under this section must so recite the right of the city to do so.
(Ord. 3709, 2023; Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Ord. 2043 §14, 1979; prior code §28-44).

12.24.130 Liability of city. The city shall assume no responsibility for excavator's surface patches or for any backfills. The Public Works and Mobility Director's or his/her designee's report upon failure of any excavator's backfill substance or upon any surface failure shall be conclusive.
(Ord. 3709, 2023; Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Prior code §28-45).

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12.24.140 Assessments for damaging or opening pavement.

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A. A charge separate from the excavation permit fee must be paid by the excavator for each square foot of pavement to be removed or damaged. Pavement may be considered damaged if it is gauged, scraped, cracked, or has wheel or tread marks as a result of excavation operations.
B. The asphalt cut assessment rate shall be established and amended by City Council after conducting a public hearing.
C. The Public Works and Mobility Director may, in their judgment, waive the assessment if the pavement is in poor condition. Monies obtained by these assessments shall be credited to the appropriate City fund and earmarked for street construction and repairs.
D. Asphalt cut assessments shall be charged prior to construction at the time of permit issuance. Square footage shall be based on the linear feet of a project along with standard trench widths as determined in the Missoula City Public Works Standards and Specifications Manual.
E. The following exceptions apply to pavement assessments:
F. When the excavation is performed at the request of the City for street reconstruction that requires utility improvements, no pavement assessment will be required of the utility making the improvements.
G. When an excavation is performed to replace or repair an existing water or sewer service, no paving assessment will be required of the property owner.

(Ord. 3709, 2023;Ord. 3526, 2014; Ord. 3492, 2013; Ord. 3462 §7, 2011; Ord. 3244, 2004; Ord. 3014, 1997; Ord. 2254 §1, 1982; prior code §28-46).

12.24.150 Requirements for non-municipal utilities.

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A. Applicability. The following section of code applies to all non-municipal utilities with buried or above ground infrastructure within right of way or public easements.

B. Registration, Permits, Construction Codes, and Cooperation
1. With the exception of routine, minor maintenance work, non-municipal utilities shall obtain a permit where required by the City's rules or regulations prior to constructing, removing, abandoning, relocating, or reconstructing, if necessary, any portion of its facilities. Notwithstanding the foregoing, City understands and acknowledges there may be instances when it is in their interest for a non-municipal utility to make repairs that are of an emergency nature without first obtaining a permit. In the event a non-municipal utility undertakes such emergency repairs without first obtaining a permit, the non-municipal utility will notify City as soon as practicable after discovering the need for repairs and will apply for such required permits in a reasonable time after notification to City.
i. Failure to obtain permits or comply with permit requirements shall subject the non-municipal utility to all enforcement remedies available to City.
2. License. Any non-municipal utility owning or operating underground facilities shall annually apply for an excavation business license to cover all excavations to be made by or on behalf of such company during each fiscal year.
3. Non-municipal utilities shall file a surety bond in the principal sum of fifty thousand dollars concerning all of the excavation or above groundwork made by or on behalf of the company. Such bond shall be filed with the City Treasurer prior to issuance of excavation business licenses.

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4. Insurance. Public utility and cable television companies shall file with the City Treasurer evidence of public liability insurance that conforms to Section 12.24.110.
5. Inspections. Non-municipal Utility companies shall request inspections as specified in Section 12.24.020 (F).
6. Comprehensive Development Plan. Each non-municipal utility company operating within the city shall provide a comprehensive development plan for the use of rights-of-way or public utility easements for their utilities. The plan shall be a five-year type plan plus information regarding long-range plans. Supplemental updates of the plan shall be

provided each year prior to January 1. The plan and yearly supplements shall contain but shall not be limited to the following:

i. Master plan of the utility in rights-of-way and public utility easements;
ii. Reconstruction, extension or replacement plans;
iii. Yearly program for construction planned;
iv. Schedules of overall improvements;
v. Location of the proposed improvement within rights-of-way and public utility easements.

C. Utility Locations and Plan Review. Locations of utilities placed in rights-of-way and public utility easements shall be approved by the Public Works and Mobility Director or designee. The construction plans shall be drawn as per the requirements of the City of Missoula Public Works Standards and Specifications Manual.

D. Minimum Interference.

1. All transmission and distribution structures, lines and equipment erected by a non-municipal utility shall be located so as to cause minimum interference with the unencumbered use of rights-of-way, public utility easements, and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the rights-of-way, public utility easements, and public places.
2. Non-municipal utilities shall provide advance notice to any private property owner and shall obtain authorization prior to commencing work on private property.

E. Disturbance or damage: Any and all rights-of-way, or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension, or reconstruction of non-municipal utility work shall be promptly and fully restored by the non-municipal utility, at its expense, to a condition as good as that prevailing prior to the non-municipal utility's work. A non-municipal utility's obligation under this paragraph will extend to the removal, disturbance, or damage to existing trees, shrubs and related City owned plantings located on public property absent the City's prior approval.

F. Relocation: Non-municipal utilities shall, at their own expense, protect, relocate, support, temporarily disconnect any of its facilities when a City project or activity makes disconnection, removal, or relocation necessary for benefit of the public.

G. Emergency: Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the City Clerk, police chief, fire chief, public works director or their delegates, to remove or damage any of non-municipal utility facilities, no charge shall be made by the non-municipal utility against City for restoration, repair, or damages.

H. Tree Trimming: Non-municipal utilities shall trim trees in accordance with Title 5, Chapter 5.80.090 of the Missoula Municipal Code and Chapter 12.32 of the Missoula Municipal Code and any other provisions of Applicable Law.

I. Protection of facilities: Nothing contained in this section shall relieve any entity from liability arising out of the failure to exercise reasonable care to avoid damaging non-municipal utility facilities while performing any work connected with grading, regrading, or changing the line of any rights-of-way, public utility easements, or public place or the construction or reconstruction of any sewer or water system.

J. Installation records: Each non-municipal utility shall keep accurate installation records of the location of all facilities in the rights-of-way, public utility easements, and other public places and furnish them to City upon request. Non-municipal utilities shall cooperate with City to furnish such information in an electronic mapping format, if possible compatible with the then-current City electronic mapping format. Upon completion of new or relocation construction of underground facilities in the rights-of-way, public utility easements, and other public places, non-municipal utilities shall provide City with installation records in an electronic format, if possible compatible with the then-current City electronic mapping format showing the location of the underground and above ground facilities.

K. Locating facilities: Non-municipal utilities shall comply with the State of Montana's One-call system for locating facilities in the right-of-way as set forth in MCA Sections 69-4-501 through 69-4-530. Non-municipal utilities are obligated to furnish location information to the City in a timely manner, but in no case longer than thirty (30) days.

L. Relocation delays.

1. If a non-municipal utility's relocation effort so delays construction of a City project causing City to be liable for delay damages, the non-municipal utility shall reimburse City for those damages attributable to the delay created by the non-municipal utility. In the event the non-municipal utility should dispute the amount of damages, the matter shall be

referred to the City Engineer for a decision. In the event that the non-municipal utility disagrees with the City Engineer's decision, the matter shall be submitted to the City Public Works and Mobility Director for determination, whose decision shall be final and binding upon the non-municipal utility as a matter of City review, but nothing herein waives any right of appeal to the courts.

2. In the event City becomes aware of a potential relocation delay involving non-municipal utility facilities, City shall promptly notify non-municipal utility and place them on notice of potential delay damages.

M. Interference with City Facilities: The installation, use, and maintenance of the non-municipal utility facilities within the rights-of-way, public utility easements, and public places authorized herein shall be in such a manner as not to interfere with City's placement, construction, use and maintenance of its rights-of-way, public utility easement, and public ways, street lighting, water pipes, drains, sewers, traffic signal systems or other City systems that have been, or may be, installed, maintained, used, or authorized by City.

N. Interference with Utility Facilities**:** The non-municipal utility shall exercise reasonable care in installing, maintaining or using any of its facilities in such a manner that will not damage or interfere with any existing facilities of another utility located within the rights-of-way, public utility easements, and public places and shall relocate its facilities, if determined to be necessary by the City Engineer, to accommodate another facilities' relocation. Nothing in this section is meant to limit any rights a non-municipal utility may have under Applicable Laws to be compensated for the cost of relocating its facilities from the utility that is requesting the relocation.

O. Colocation: To maximize public and employee safety, to minimize visual clutter of aerial plant, and to minimize the amount of trenching and excavation in and along rights-of-way, public utility easements, and public places, non-municipal utilities shall make every commercially reasonable effort to co-locate compatible facilities within rights-of-way, public utility easements, and public spaces, subject to the engineering requirements of the owners of utility poles and other facilities.

P. Safety Requirements. Non-municipal utilities shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries.

1. Non-municipal utilities shall install and maintain its system and other equipment in accordance with City's codes and the requirements of the National Electric Safety Code and all other applicable FCC, state, and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.

(Ord. 3709, 2023; Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Ord. 2560, 1987; Ord. 2043 §15, 1979; prior code §28-47).

12.24.160 Repealed (Ord. 3709, 2023; Ord. 3244, 2004; Ord. 3014, 1997; Prior code §28-48)

12.24.170 Cleaning up of excavation site. The excavator shall prevent all mud, rocks, or debris from being spilled or dragged onto rights-of-way outside the excavation site. Upon completion of excavation work, the entire area in all directions shall be cleared of all debris, boulders and all other excess materials from excavation, backfill and resurfacing operations to the satisfaction of the Public Works and Mobility staff. This clean up requirement shall include private property, as well as public rights-of-way.
(Ord. 3709, 2023; Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Prior code §28-50.3).

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12.24.180 Requirements for special projects. The following shall apply to special projects as determined by the Public Works and Mobility Director or a designated agent. Contractor and subcontractors performing excavations for special improvement districts shall conform to the specifications and contract documents for that special improvement district in lieu of the Engineering construction requirements of this chapter.
(Ord. 3709, 2023; Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Prior code §28-50.5)

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12.24.190 Violation--Penalty. It shall be unlawful for any person to fail to perform any of the conditions set out in this chapter. Upon conviction, a minimum fine of five hundred dollars will be levied. Any excavator convicted of a violation of this chapter may have their city business license revoked as per Section 5.08.120 M.M.C. Further, any person convicted of a violation of this chapter shall be required to post with the City Treasurer a cash bond in the amount of five thousand dollars before they may perform any further excavating work within the city. The cash bond shall be used on order of the Development Services Director to repair and maintain any further excavations made by such person. (Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Ord. 2043 §16, 1979; prior code §28-50.4).

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Chapter 12.28

OBSTRUCTIONS

Sections:

12.28.010 Generally.
12.28.020 Signs--Generally.
12.28.030 Signs--Maximum overall height.
12.28.040 Signs--Extension of existing signs.
12.28.050 Boxes, crates and barrels.
12.28.060 Building materials.
12.28.070 Passage on streets and sidewalks not to be obstructed.
12.28.080 Awnings.
12.28.090 Materials from defective vehicles.
12.28.100 Obstructions caused by railway cars.
12.28.110 Visibility obstructions.
12.28.120 Visibility obstructions--Exceptions.
12.28.130 Visibility obstructions--Existing obstructions.
12.28.140 Visibility obstructions--Misdemeanor and penalty.
12.28.150 Visibility obstructions--Removal of obstructions by city.

12.28.010 Generally. No person shall maintain or carry on any game, wheel of fortune, lottery or gift enterprise of any kind in or upon any street or alley, and no person shall maintain any stand, platform, vehicle or other obstruction of any kind for the sale or exhibition of any article, apparatus or machinery of any kind in or upon any street or alley unless it is within the central business district and a permit shall have first been obtained in accordance with Chapter 5.56.
(Ord. 2369 §1, 1984; Ord. 2043 §28, 1979; prior code §28-101).

~~**12.28.020 Signs--Generally.** No person shall place, erect, or maintain, or cause to be placed, erected, or maintained, upon, over, or across any street, sidewalk, or alley any hanging or swinging sign or signs, or post or posts, or any obstruction of any kind or character as will in any degree interrupt or hinder the free use of the street, sidewalk, or alley by the public, or that will in any manner endanger the safety of any person passing or traveling along, upon, or over such streets, alleys, and sidewalks, except small sidewalk commercial signs may be used provided that:~~

~~1. No such sign may obstruct pedestrian or other traffic;~~
~~2. No such sign may be lighted or use electricity;~~
~~3. No such sign may be larger than five feet in height or three feet in width;~~
~~4. No such sign may hang, but must rest on the ground or on supports placed on the ground;~~
~~5. The business establishment using the sign has no other feasible means of advertising;~~
~~6. The sign is approved by the Public Works and Mobility staff.~~

~~The use of any sign authorized by this section is a privilege granted by the city and shall not constitute a nonconforming use in the event such signs are prohibited in the future.~~
~~(Ord. 3709, §2023; Ord. 3492, 2013; Ord. 2598 §1, 1987; Ord. 1930, 1978; Ord. 1869, 1977; prior code §28-102).~~

~~**12.28.030 Signs--Maximum overall height.** No sign, illuminated or otherwise, shall be constructed within the city limits of an overall height of more than thirty-two feet. (Prior code §27A-1).~~

~~**12.28.040 Signs--Extensions of existing signs.** No present sign shall be extended in height if such extension will cause the sign to be of a height greater than thirty-two feet. (Prior code §27A-2).~~

12.28.050 Boxes, crates and barrels. It is unlawful for any person to leave standing upon any sidewalk, street, avenue or alley, for a longer period than two hours at any one time, any dry goods, boxes, crates, packing boxes or barrels. (Prior code §28-105).

12.28.060 Building materials. It is unlawful for any person to place or leave upon any street, avenue or alley any rock, stone, lumber, brick or other building material, unless permission to do so shall be first obtained from the Public Works

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and Mobility staff or unless the person shall be entitled to do so under a building permit issued by Public Works and Mobility staff.
(Ord. 3709, 2023; Ord. 3492, 2013; Ord. 2043 §30, 1979; prior code §28-107).

12.28.070 Passage on streets and sidewalks not to be obstructed. It is unlawful for any person in any manner to obstruct any sidewalk, street, avenue or alley, so as to prevent uninterrupted and unobstructed passage and travel upon or over the same. Vehicles shall be parked entirely within private property lines or parallel along the street edge, except as ~~allowed by Section 10.22.110.~~ (Ord. 2043 §29, 1979; prior code §28-104).

12.28.080 Awnings. ~~Every awning hung to any building, where the awning extends or projects out over any sidewalk, street or alley, shall be so hung and adjusted as to leave free from any obstruction seven feet between the bottom of the awning and the surface of the sidewalk, street or alley over which the awning extends or projects. (Prior code §28-103) .~~

12.28.090 Materials from defective vehicles. It shall be unlawful for any person to haul through, upon or along any street or alley any dirt, soil, sand, gravel, stone, straw, wastepaper or rubbish of any kind, in any cart, wagon or other vehicle of any kind, unless the cart, wagon or other vehicle shall have in their proper places end gates not less than the height of the sideboards. The person in charge, possession or control of any cart, wagon or other vehicle must at once replace any part of the contents thereof which may fall, drop or be spilled therefrom upon any street, avenue, alley or other public place. (Prior code §28-108).

12.28.100 Obstructions caused by railway cars.

A. It shall be unlawful for any person or railroad company, or its agents or employees, to obstruct for a longer time than ten minutes the free passage of any street or highway within the limits of the city by means of any railroad car, cars, engine or engines or train; or to permit the same or either of them to remain in or upon any public street or highway across which any railroad is constructed or operated for a longer period than ten minutes.

B. Any person, railroad company, corporation or other entity violating this section shall be deemed guilty of a misdemeanor. The minimum punishment for the first offense violation of this section within any thirty-day time period shall be two hundred fifty dollars. The punishment for a second or additional offense of this section within thirty days of a prior offense by the same party or entity responsible for the earlier offense shall be the maximum allowable fine of five hundred dollars per additional offense during that time period. No portion of the above identified minimum fines shall be suspended by the court, except in instances where the violator establishes to the court's satisfaction that the time length of the obstruction involved with respect to a specific violation was directly attributable to mechanical or equipment failure of railroad equipment and/or a railroad emergency such as but not limited to a derailment which has occurred at or near the street intersection; in which case the court in its discretion may suspend all or a portion of the mandatory fine established pursuant to this section. (Ord.. 2601, 1988; prior code §28-109).

12.28.110 Visibility obstructions. Signs, fences, hedges, walls, shrubbery, natural growth, or other obstructions to the view, whether movable or stationary exclusive of motor vehicles, located on private property or public right-of-way that are higher than thirty inches above the level of the established top-of-street curb grade or level of the adjacent street intersection and are located within:

A. Sight visibility triangles as documented in Chapter 9.5 Intersection Sight Distance, in the American Association of State Highway and Transportation Officials (AASHTO) *A Policy on Geometric Design of Highways and Streets.*

B. The isosceles triangle having sides of ten feet along the right-of-way line of an alley or along the edge line of a private drive, for pedestrian purposes, and along:

   1. The outside edge of the sidewalk, or

   2. If there is no sidewalk, the curb line; or

C. Regardless of other provision of this section fences, walls, trees, or hedges erected or maintained in any area which materially impedes vision of vehicles entering an abutting street as determined by Public Works and Mobility staff; are obstructions to visibility of pedestrians and persons operating vehicles and are public nuisances.

It is the duty of the owner or tenant of any premises within the city to abate such public nuisances in front of and adjoining their premises within the public right-of-way or upon their premises by destroying, removing, or trimming the cause of the public nuisance.

Commented [SR86]: Moved to UDC Chapter 6.3.5

Commented [SR87]: Moved to UDC Chapter 6.2.8

Commented [SR88]: Moved to UDC Chapter 6.2.1.E

Commented [SR89R88]: Leave in MMC

(Ord. 3709, 2023; Ord. 3676, 2021; Ord. 3492, 2013; Ord. 2598 §2, 1987).

12.28.120 Visibility obstructions--Exceptions. Section 12.28.110 shall not apply to trees trimmed to the trunk to at least eight feet above the level of the curb and that are planted so as to leave a clear unobstructed cross-view. Section 12.28.110 also shall not apply to fire hydrants; public utility poles; street markers; traffic control devices; existing permanent buildings; existing grades, which by reason of natural topography exceed thirty inches above the curb; and private signs mounted eight feet or more above the curb and whose supports higher than thirty inches above the established top of curb grade or level of the adjacent intersection do not exceed twelve inches in diameter.
(Ord. 3676, 2021; Ord. 2598 §3, 1987).

12.28.130 Visibility obstructions--Existing obstructions. No obstruction to cross-visibility shall be exempted or excluded from the application of this chapter because of its being in existence at the time of the adoption hereof. (Ord. 2598 §4, 1987).

12.28.140 Visibility obstructions--Misdemeanor and penalty.

A. It shall be a misdemeanor for any person or persons or corporations owning real property or tenants of any real property to install, set out, or maintain or to allow the installation, setting out, or maintenance of any private signs, hedge, fence, shrubbery, natural growth, or other obstruction to the view, whether movable or stationary, higher than thirty inches above the level of the street curb or the level of the adjacent roadway on any private property or public right-of-way that is located in the areas described in Section 12.28.110, subsections A, B, and C.

B. Any person or persons or corporations violating Section 12.18.110 of this code after thirty days' notice by the Public Works and Mobility Director, shall be guilty of a misdemeanor and on conviction shall be fined any sum not less than fifty dollars nor more than one hundred dollars, and each day that the violation shall continue shall constitute a separate offense.
(Ord. 3709, 2023; Ord. 3676, 2021; Ord. 3492, 2013; Ord. 2598 §5, 1987).

12.28.150 Visibility obstructions--Removal of obstructions by city. In the event of any violation of Sections 12.28.110 in addition to the fine mentioned in Section 12.28.140, the city, at the direction of the city engineer, is authorized to go on the real property and to take any usual and necessary action to effect full compliance with the provisions of these sections. The cost thereof shall be a charge against the person or persons or corporation responsible and shall be a lien against the property from which such obstruction is removed. (Ord. 2598 §6, 1987).

~~**Chapter 12.30**~~

~~**FENCES**~~

~~Sections:~~

~~12.30.010 Repealed.~~
~~12.30.020 Repealed.~~
~~12.30.030 Repealed.~~
~~12.30.040 Repealed.~~
~~12.30.050 Repealed.~~
~~12.30.060 Repealed.~~
~~12.30.070 Repealed~~

~~**12.30.010 Repealed** (Ord. 3577, 2016; Ord. 3180, 2001; Ord. 3023, 1997; Ord. 2739 §1, 1990)~~

~~**12.30.020 Repealed** (Ord. 3577, 2016; Ord. 3526, 2014; Ord. 3501 §5, 2013; Ord. 3492, 2013; Ord. 3492, 2013; Ord. 3343 §6, 2010; Ord. 3384 §6, 2008; Ord. 3350 §6, 2007; Ord. 3323 §6, 2006; Ord. 3298, 2005; Ord. 3259 §5, 2004; Ord. 3227, 2003; Ord. 3180, 2001; Ord. 3023, 1997; Ord. 2944, 1995; Ord. 2739 §2, 1990).~~

~~**12.30.030 Repealed** (Ord. 3577, 2016; Ord. 3492, 2013; Ord. 3180, 2001; Ord. 3023, 1997; Ord. 2739 §3, 1990).~~

Commented [SR90]: Moved to UDC Chapter 6.2.1.E
Commented [SR91R90]: Leave in MMC

Commented [SR92]: Moved to UDC Chapter 6.2.1.E

Commented [SR93]: Moved to UDC Chapter 6.2.1.E
Commented [SR94R93]: Leave in MMC

Commented [SR95]: Moved to UDC Chapter 6.2.1.E
Commented [SR96R95]: Leave in MMC

12.30.040 Repealed (Ord. 3577, 2016; Ord. 3240, 2003; Ord. 3180, 2001; Ord. 3023, 1997; Ord. 2944, 1995; Ord. 2770, 1991; Ord. 2739 §4, 1990).

12.30.050 Repealed (Ord. 3577, 2016; Ord. 3526, 2014; Ord. 3501 §6, 2013; Ord. 3492, 2013; Ord. 3476 §7, 2012; Ord. 3462 §8, 2011; Ord. 3433 §7, 2010; Ord. 3384 §7, 2008; Ord. 3355, 2007; Ord. 3350 §7, 2007; Ord. 3323 §7, 2006; Ord. 3298, 2005; Ord. 3259 §6, 2004; Ord. 3227, 2003; Ord. 3180, 2001; Ord. 3023, 1997; Ord. 2739 §5, 1990).

12.30.060 Repealed (Ord. 3577, 2016; Ord. 3492, 2013; Ord. 3180, 2001; Ord. 3023, 1997; Ord. 2739 §6, 1990).

12.30.070 Repealed (Ord. 3577, 2016; Ord. 3492, 2013; Ord. 3180, 2001; Ord. 3023, 1997; Ord. 2944, 1995)

Chapter 12.31

Commented [SR97]: Moved to UDC Chapter 6.4

FENCES

Sections:

12.31.010 Authority.
12.31.020 Purpose.
12.31.030 Applicability.
12.31.040 Conflicting Provisions.
12.31.050 Definitions.
12.31.060 Fences – General Conditions.
12.31.070 Fence Standards and Restrictions – Residential Uses.
12.31.080 Fence Standards and Restrictions – Commercial/Industrial/Agricultural Uses.
12.31.090 Fence Gates and Arbors.
12.31.100 Fence Encroachments – Permits and Provisions.
12.31.110 Construction Site Fences.
12.31.120 Investigate Fee – Work without a Permit.
12.31.130 Penalty.
12.31.140 Appeal Process.
12.31.150 Severability.

12.31.010 Authority. This ordinance is adopted pursuant to the powers granted and limitations imposed by Montana state law; Montana Code annotated (MCA) and the City of Missoula's self-governing power. (MCA 7-14-41, MCA 7-15-41 and MCA 60-1-103) (Ord. 3577, 2016)

Commented [SR98]: Moved to UDC Chapter 6.4.1

12.31.020 Purpose. The City Council declares that the purpose of this chapter is based on its determination that it finds it necessary for public safety, health, and general welfare to regulate the installation of fences. (Ord. 3577, 2016)

Commented [SR99]: Moved to UDC Chapter 6.4.1

12.31.030 Applicability. This code shall apply to public rights-of-way, public easements, and private property within the City of Missoula and shall define and regulate the design, construction, and inspection requirements for construction of fences when a fence permit is required by Missoula Municipal Code (MMC). (Ord. 3577, 2016)

Commented [SR100]: Moved to UDC Chapter 6.4.1

12.31.040 Conflicting Provisions. If any provisions of this Fence Ordinance conflict with any provisions or regulations of Federal, State, or Local Government, then the most restrictive requirement(s) shall apply, to the extent permitted by law. (Ord. 3577, 2016)

Commented [SR101]: Moved to UDC Chapter 6.4.1

12.31.050 Definitions.

Commented [SR102]: Moved to UDC Chapter 6.8

A. "Agriculture" means the use of land for growing, raising, or marketing of plants to produce food, feed, or fiber commodities. Examples of crop agriculture include cultivation and tillage of the soil and growing and harvesting of agricultural or horticultural commodities. Crop agriculture does not include personal (household) gardens. Also, the use of land for raising animals to produce food or fiber commodities. Examples of animal agriculture include dairying and the raising of livestock, bees, fur-bearing animals, and poultry. Animal agriculture does not include the keeping of up to 6 female chickens, in accordance with Chapter 6.07 of the municipal code.

B. "Arbor" means a fence feature forming a latticework or archway over a gate.

C. "Fence" means any kind of wall, enclosure, or barrier around the property that does not otherwise structurally function as a retaining wall (a wall built to keep earth or water in place) or as a structural, integral part of a building as defined by the International Building Code (IBC) and International Residential Code (IRC).

D. "Electric Fence" means any commercially available (off-the-shelf), packaged fencing system of one (1) joule or less and six thousand (6,000) volts or less that is connected to:

1. Any standard 110/120-volt receptacle/outlet.
2. Any hydro, solar, wind, or other natural-resource power system.

E. "Front Yard Fence" means a fence that is intended to contain people and pets, to prevent intrusion by people or pets, or to simply mark a boundary and are not meant for privacy or to restrict vision, but for openness and continuity along the street frontage.

F. "Rear Yard Fence" means a fence that is intended to foster privacy, but with height limitations.

G. "Encroaching Fence" means any portion of a fence that extends beyond private property into the public right-of-way; towards the sidewalk, street, alley, or any other public space; above and/or below the ground.

H. "Gate" means a device at a passageway or a moveable barrier, located in a section of a fence that can swing, slide, raise/lower, or otherwise provide access, ingress, and/or egress to the property or enclosed area.

(Ord. 3577, 2016)

12.31.060 Fences – General Conditions.

Commented [SR103]: Moved to UDC Chapter 6.4.1

A. Fence Permit Required. Any property owner or contractor constructing a new fence or any time twenty-five (25') feet or more of any portion of an existing fence (front or rear) is replaced, reconstructed, or repaired by a property owner or contractor, a fence permit shall be obtained from the City, prior to the construction or reconstruction of said fence. Fence permit fees are established by Resolution. One (1) fence permit is required per physical location, parcel, lot, or address. One (1) permit shall not be issued for multiple locations or addresses unless one (1) physical location, parcel, or lot has multiple addresses (such as a multi-family parcel). All work under this permit shall be completed within one hundred eighty (180) days of issuance. Any work to be done after one hundred eighty (180) days of the date of the permit shall require a new permit.

B. Fence Maintenance. The property owner shall assume, by way of an approved fence permit application, all responsibility to maintain approved fence in good repair at all times at their sole expense. The fence that is approved to be constructed shall always be maintained in a condition that is deemed safe and satisfactory, as determined by Public Works and Mobility Inspectors.

C. Fence Liability. The property owner shall assume, by way of an approved fence permit application, all liability resulting from any incident involving the approved fence installation and maintenance and shall hold the City harmless from all damages resulting from such incident.

D. Fence Responsibilities. The property owner shall assume, by way of an approved fence permit application, all responsibility to install the fence on the property owners' property. All fences shall be installed inside the property line so that no component; post, footing/base, or any other portion of the fence extends beyond the property line. If the location of the property line is unknown or unclear, it is recommended that, at minimum, a retracement survey be performed by a Montana licensed professional land surveyor, prior to fence installation. A dispute over property line location between neighbors is a civil matter and shall be directed to the civil court system.

E. Fence Permit Revocation. The property owner acknowledges, by way of an approved fence permit application, that if the fence is not constructed in accordance with the approved plans or is constructed so to encroach into the public right-of-way, the issued fence permit may be revoked. If the fence permit is revoked, the property owner agrees to immediately take corrective action and/or remove the fence and restore the premises to its original condition.

F. Covenants, Conditions, and Restrictions. Homeowners are encouraged to check Covenants, Conditions, and Restrictions that may apply to construction of fences in their subdivision before applying for fence permits.

G. Building Permits. Any fence exceeding eighty-four (84") inches or seven (7') feet in height shall be designed and engineered for safety, structural soundness, and lateral/wind load analysis and require a City Building Permit in addition to the required City Fence Permit.

H. Determining Yards. For irregular-shaped lots and in other instances where yards are not clearly defined in this section, the Zoning Officer is authorized to establish Front and Rear Yards for the purposes of fence location and construction.

I. Maximum Fence Heights Exception. Requests to exceed the maximum height standards provided in this Chapter may be approved if the Development Services Director finds that there are unusual circumstances that warrant the additional height, the proposed fence is sensitive to neighborhood character, and it will not have a negative impact on residential neighbors. The property owner shall provide comment from the adjacent property owners to be included with the exception request.

J. Fence installation relative to public sidewalks.

1. Where public sidewalks do not exist, fences shall be installed no closer than twenty-four (24") inches or two (2') feet to the back of any future public sidewalk as determined by the City Engineer. This is to facilitate the installation of the future sidewalk without disturbance to the fence.
2. Where public sidewalks do exist, no fence shall be installed closer than twelve (12") inches or one (1') foot to the back of the sidewalk. This is to facilitate the maintenance and/or replacement of the existing sidewalk without disturbance to the fence.
3. The fence must still be located on private property, regardless of existing or future sidewalk location, unless an encroachment permit has been approved per Section 12.31.100.

K. Fences within an Easement or Levee. The property owner acknowledges, by way of an approved fence permit application, that certain types of fences may be permitted to encroach into certain types of easements. Property owner(s), fence permittee(s), or fence contractors shall review the plat or any separate easement document(s) for the subject property prior to submitting for an application for a Fence Permit. Fences constructed over, upon, or within an easement may be removed without notice. Property owner(s)/fence permittee(s) accept any and all liability for damage, maintenance, or repair to the easement as a result of the fence. For properties located through, upon, or within a levee, no fence of any kind shall be constructed through, upon, or within the levee. No flood control device shall be altered, damaged, impeded, or removed as a result of fence installation.

(Ord. 3709, 2023; Ord. 3577, 2016)

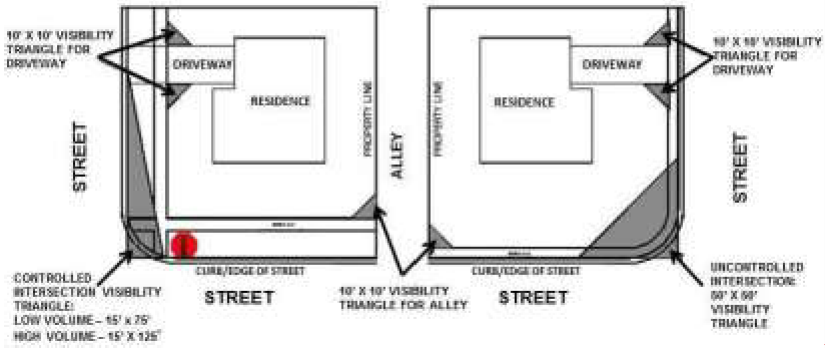
12.31.070 Fence Standards and Restrictions – Residential Uses. Residential Fence Restrictions apply to all residential development including single-family homes, duplexes, triplexes, and multi-family development.

Commented [SR104]: Moved to UDC Chapter 6.4.2

A. No fence shall be constructed or installed anywhere which restricts or obstructs sight visibility as described in Section 12.28.110 of this code.

Figure 12.31.070-1.

Sight Visibility Standards



~~B. Fence Height (See Figure 12.31.070-2 for Yards and Fence Heights)~~

~~1. Front Yard fences shall have a maximum height of forty-eight (48") inches or four (4') feet. Front Yard height is to be measured at the ground level immediately adjacent to the fence or the adjacent sidewalk grade (existing sidewalk or future/proposed sidewalk) to the top of the fence post.~~

~~2. When an existing home is further from the front property line than the other homes on the same side of the block a front yard fence on the subject parcel may be constructed at the location of the average front yard depth of the parcels within the block face.~~

~~3. Exceptions from maximum fence height as specified in Section 12.30.070 B.1 above may be granted by the Zoning Officer to allow a six foot (6') fence height in the following cases:~~

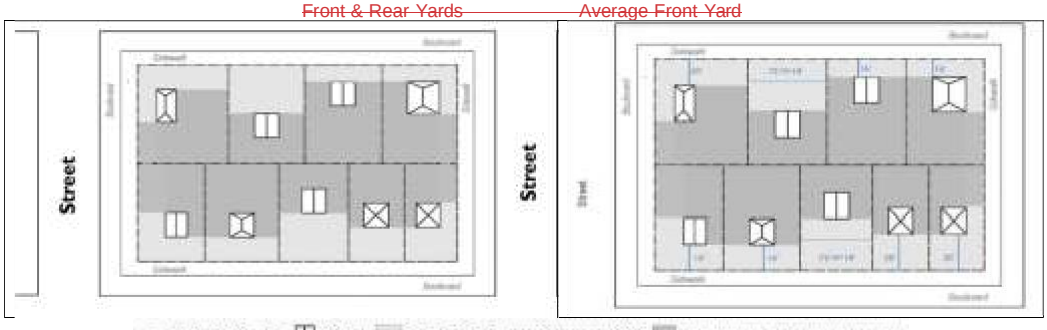
~~a. Where portions of a pre-existing single family home are immediately adjacent to, or directly across the street from, a new commercial/industrial use that has generated additional impacts.~~

~~b. Fences in residential areas that are facing or fronting property with railroad tracks used daily.~~

~~Figure 12.31.070-2.~~

~~Yards and Fence Heights~~

~~Front & Rear Yards~~ ~~Average Front Yard~~



~~4. Rear Yard Fences shall have a maximum height of seventy-two (72") inches, or six (6') feet. Rear Yard fence height is to be measured from the height of the ground level adjacent to the fence.~~

5. Height of fences built upon or immediately behind a retaining wall shall be measured from the grade of the ground retained by the wall.

C. Wildlife fences designed to exclude deer or elk from residential gardens, up to ninety-six (96") inches or eight (8') feet in height, will be permitted subject to the following restrictions:

1. The wildlife fence is in the rear yard and encloses the minimum area necessary to protect planted area(s). The planted area(s) must be delineated on a site plan (this provision is not intended to promote the fencing of entire yards).
2. The wildlife fence has a maximum of ten (10%) percent opacity and the fence material is standard woven wire or custom high-tensile wire/mesh. In order to protect wildlife from injury there may be gaps of no more than eighteen (18") inches between the horizontal wire strands, no barbed wire or other components or attachments injurious to wildlife and there must be a highly-visible top rail (flags may be used).
3. Fences in excess of eighty-four (84") inches or seven (7') feet in height require a building permit.
4. Wildlife fences that do not meet the standards above may be permitted as an exception if the design is deemed to be an acceptable alternative by the Development Services Director that protects gardens while being safe for wildlife, sensitive to neighborhood character, and not have a negative impact on residential neighbors. The property owner shall provide comment from the affected adjacent property owners to be included with the exception request.

D. Electric fences for deterring bears from apiaries (beehives), fruit trees, gardens, livestock pens, rabbit hutches, garbage containers, dog kennels, chicken coops, compost piles, storage sheds, and other uses may be permitted with approval of the Development Services Director in the Bear Buffer Zone as shown in Appendix A of Missoula City Resolution #7503 or on a parcel where a documented incident has occurred involving a bear on the property. The fence must enclose the minimum area necessary to protect the use. Electric fences may not be erected along or adjacent to any street, alley, sidewalk, or other public right-of-way or public property or along any dividing line between separate pieces, parcels, or lots of land. Montana Fish, Wildlife & Parks' publication Deterring Bears with Electrified Fencing: A starter's guide is a resource for design and specifications.

E. No fence in a residential area shall be constructed of, or contain:

1. Broken glass.
2. Barbed wire.
3. Razor wire.

F. No fence in a residential area adjacent to a public sidewalk shall be constructed of, or contain, materials having sharp, hazardous points, or protrusions.

(Ord. 3577, 2016)

12.31.080 Fence Standards and Restrictions – Commercial/Industrial/Agricultural Uses.

Commented [SR105]: Moved to UDC Chapter 6.4.3

A. No fence shall be constructed, or installed anywhere which restricts, or obstructs, sight visibility as described in M.M.C. Section 12.28.110 and Figure 12.31.070-1.

B. Fence Height:

1. Commercial/Industrial/Agricultural fences shall have a maximum height of ninety-six (96") inches or eight (8') feet on all sides. Fences in excess of eighty-four (84") inches or seven (7') feet in height require a building permit.
2. In cases where portions of an existing single family home are immediately adjacent to a commercial/industrial development the maximum height of the commercial/industrial fencing shall be seventy-two (72") inches or six (6') feet.

C. Barbed Wire/Razor Wire Fences:

1. Barbed wire or razor wire used on Commercial/Industrial fences may be permitted with approval of the Zoning Officer. Barbed wire or razor wire used along the top of the fence shall start at a height of not less than seventy-two (72") inches or six (6') feet, and shall not be angled so as to extend beyond the property line. Barbed wire

or razor wire along the top of a fence is considered to be part of the fence and shall not extend beyond a total height of ninety-six (96") inches or eight (8') feet.

2. Barbed wire fences may be used to secure livestock for agricultural purposes.

3. Barbed wire or razor wire fencing may not be installed along or adjacent to any street, alley, sidewalk, or other public right-of-way or public property or along any dividing line between separate pieces, parcels or lots of land.

D. Electric Fences:

1. Electric fences may be permitted with approval of the Zoning Officer on commercial, industrial, or agricultural properties where there is a demonstrated general security need or a need to secure agricultural livestock or protect agricultural crops. Where permitted, electric fences shall consist of any commercially available (off-the-shelf), packaged fencing system of one (1) joule or less and six thousand (6,000) volts or less that is connected to:
   a. Any standard 110/120-volt receptacle outlet.
   b. Any hydro, solar, wind, or other natural-resource power system.
2. The fence charger shall be installed not less than six (6') feet above ground.
3. The fence shall, at minimum, have one (1) sign at each end and/or corner of the electric fence consisting of, at minimum, eighty (80 sq. in.) square inches (i.e. eight (8") inches by ten (10") inches). Signage language shall include "WARNING" or "CAUTION" and "ELECTRIC FENCE" and display electrical symbols such as a lightning bolt.
4. All modified or altered commercial fencing systems, home-built fencing systems, or automotive/marine battery-operated fencing systems are not permitted.
5. Electric fences may not be erected along or adjacent to any street, alley, sidewalk, or other public right-of-way or public property or along any dividing line between separate pieces, parcels, or lots of land.

E. Commercial/Industrial/Agricultural fences shall not encroach into the public right-of-way. Exceptions may only be granted by the City Engineer when it has been determined that the public safety/public interest will be served by issuing an encroachment permit. If an exception is granted all requirements in 12.31.100 apply.

(Ord. 3577, 2016)

12.31.090 Fence Gates and Arbors.

Commented [SR106]: Moved to UDC Chapter 6.4.4

A. No gate shall open in any way as to extend beyond the property line and/or into the street, alley, sidewalk, or other public right-of-way. All gates shall open into the property or be offset into the property at least a distance equal to the width of the gate. All gates shall be subject to the same height restriction(s) as the fence segment in which the gate is located.

B. An arbor may be used over a gate where there is a walkway. The arbor must have a minimum of 6'8" height clearance, may not exceed overall height of 10', and must be outside of the right-of-way.

(Ord. 3577, 2016)

12.31.100 Fence Encroachments – Permits and Provisions. The City Engineer is authorized to grant a fence encroachment permit to the owner of land abutting city right-of-way for a temporary revocable privilege to construct, install, and maintain a fence upon a portion of the public right-of-way that is not currently or prospectively used or needed in the near future for any public travel or public use.

Commented [SR107]: Moved to UDC Chapter 6.4.5

A. Fence Permit Encroachment. A fence encroachment permit is required for any fence that encroaches into the right-of-way. The fence encroachment permit is a revocable privilege and consists of a fence encroachment permit and a notice signed by the property owner that will be filed at the Missoula County Clerk and Recorder office containing the following sections.

1. The property owner recognizes that the City retains its right to use and to access the public right-of-way subject to the fence encroachment permit, and,
2. The property owner recognizes that the permit is revocable by the City at any time upon thirty (30) days' notice to the permittee. The permittee will be required to remove the fence and restore the land to its former condition, all at the permittee's expense, upon receipt of such notice; and,

3. The property owner will assume all liability resulting from any incident involving an encroaching fence and shall hold the City harmless from all damages resulting from such incident and the assumption of liability will be binding on successors in interest; and,
4. Any subsequent property owner will have the same conditions, responsibilities, and honor all covenants as agreed by the original property owner receiving the original fence encroachment permit; and,
5. The encroaching fence will comply with all provisions of the fence ordinance; and,
6. The property owner will pay a fence encroachment permit fee as established by City resolution, unless the fee is waived per 12.31.100 C.2.

B. Fence Encroachment General Requirements.
1. No fence shall be allowed to encroach into Montana Department of Transportation (MDT) right-of-way without MDT approval and the approval of a City of Missoula encroachment permit.
2. If no public sidewalk or curb exists, the City Engineer shall determine the most probable location of the future sidewalk/curb and approve the fence location based on this information. The City Engineer, at his discretion, may require the installation of curb and sidewalk prior to approval of the encroachment permit.
3. Encroaching fences shall have posts not exceeding two and three-eighths (2-3/8") inches outside diameter for metal pipe or four (4") inch square dimension for wooden posts. No fences shall be constructed of stone, rock, masonry, any metal with pointed or projecting tops, cable, or chain. Prior to the issuance of the fence encroachment permit, the fence design shall be approved by the City Engineer or a designee to ensure conformity to this section and to be reviewed for potential hazards.
4. No other structure or storage of personal property inclusive of motorized vehicles other than landscape materials approved by Section 12.48 Boulevards of this code shall be allowed in the public right-of-way behind a permitted encroaching fence. There shall be no shrubs, bushes, or hedges exceeding the height of the permitted fence in the public right-of-way.
5. No electric, barbed wire, or razor wire fences are allowed as Encroachment Fences.
6. Encroaching fences shall meet all applicable requirements of this chapter.

C. Fence Encroachments: Existing. Existing fences that encroach upon a portion of the public right-of-way shall be approved by the City Engineer and are subject to all requirements of this chapter.
1. When twenty-five (25') feet or more of an existing fence in the public right-of-way is replaced, repaired, or reconstructed, a new fence encroachment permit shall be obtained from the City prior to re-construction of the fence.
2. When an existing fence in the public right-of-way is replaced, repaired, or re-constructed and the reconstruction results in a reduction to the amount of encroachment, the encroachment permit fee will be waived.
3. The City Engineer may order that an encroaching fence be removed, modified, or relocated due to:
   a. Causing a sight obstruction in accordance with Section 12.28.110 of this code;
   b. Installation of any public improvements within the right-of-way;
   c. Installation of a traffic control device;
   d. An order by the City Council;
   e. The owner replacing, reconstructing, or repairing twenty-five (25') feet or more of the existing encroaching fence; or,
   f. If the fence is in hazardous condition.

(Ord. 3577, 2016)

12.31.110 Construction Site Fences.

A. No construction site fence shall be constructed or installed which restricts or obstructs sight visibility as described in Section 12.28.110 of this code.

B. Construction fencing on private property does not require a fence permit.
C. Construction fencing may be up to seventy-two (72") inches or six (6') feet in height on all sides of the worksite.
D. A construction fencing base shall not obstruct any pedestrian or vehicular traffic on sidewalks, streets, alleys, or any public right-of-way.
E. Construction fencing shall not be permitted in the public right-of-way without prior issuance of a Right-Of-Way Occupancy Permit.
F. Construction fencing shall be maintained in a safe condition for the duration of the construction project, as determined by Public Works and Mobility Inspectors.

Commented [SR108]: Moved to UDC Chapter 6.4.6

G. Construction fencing is subject to all other fence restrictions identified in this chapter.

(Ord. 3709, 2023; Ord. 3577, 2016)

12.31.120 Investigative Fee – Work without a Permit. Investigation. Whenever any fence work, for which a fence permit is required by this ordinance, has been commenced prior to obtaining said permit, an investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required as established by resolution and paid before any permit issued. The payment of such investigation fee shall not exempt any person from compliance will all provisions of this ordinance. In addition to the investigation fee, the Development Services Director may require additional mitigation including but not limited to removal of the fence. The Development Services Director may grant relief from the investigation fee upon written request from the contractor or property owner.

(Ord. 3577, 2016)

Commented [SR109]: Moved to UDC Chapter 6.4.9

12.31.130 Penalty.

A. It shall be unlawful for anyone to construct a fence or to allow a fence to be constructed on their real property in violation of this chapter. There shall be a fine of up to five hundred ($500.00) dollars for not complying with the above chapter. Imprisonment shall not be a penalty for any such violation.

B. Any fence not in compliance with this chapter may be ordered removed by the City Engineer or designee. Any fence not removed or brought into compliance within thirty (30) days' notice from the City Engineer or designee shall be removed by City labor forces or by an assigned contractor with all associated costs assigned to the property owner to become a recordable lien.

(Ord. 3577, 2016)

Commented [SR110]: Moved to UDC Chapter 6.4.7

12.31.140 Appeal Process. Appeals of decisions on a fence permit by the Development Services Director may be filed by any person aggrieved by the decision to the Missoula City Council by submitting a formal letter to Development Services Director requesting that the issue be referred to the City Council citing justification as to why the Development Services Director decision should be overruled.

(Ord. 3577, 2016)

Commented [SR111]: Moved to UDC Chapter 6.4.8

Chapter 12.32

COMPREHENSIVE TREE AND SHRUB PLANTING, PRUNING AND MAINTENANCE REGULATIONS

Sections:

12.32.010 Purpose.
12.32.020 The City Tree Board.
12.32.030 City forester--Establishment--Duties.
12.32.040 Scope of applicability.
12.32.050 Definitions.
12.32.060 Permit requirement.
12.32.070 Responsibility for trees.
12.32.080 Licensing.
12.32.090 Landscaping required for new developments.
12.32.095 Tree requirements for public trees.
12.32.100 Public utilities.
12.32.110 Vandalism or damage to woody vegetation.
12.32.120 Providing barriers during construction.
12.32.130 Attaching ropes, wires or handbills to trees in a public place.
12.32.140 Tree topping.
12.32.150 Declaration of hazard.
12.32.160 Tree planting, maintenance and removal.
12.32.170 Interference with city parks and recreation department
12.32.180 Appeal from order of city parks and recreation department.

12.32.190 Penalties.
12.32.200 Tree Appendix.
12.32.210 Severability.

12.32.010 Purpose.

A. The purpose of this chapter is to protect the health, safety and welfare of both the public citizenry and the trees in the City of Missoula by establishing standards and regulations to control planting, planning, removal, maintenance, and protection of the trees and shrubs within the public rights of way and public land areas from undesirable and unsafe planting, removal, maintenance and protection practices and by eliminating and guarding against dangerous conditions which may result in injury to persons using the public areas of the city; and by promoting the enhancement and natural beauty of the city; as well as to prevent damage to any public sewer or water main, street, sidewalk or other public property; and to guard all trees and shrubs within the City against the spread of disease or pests.

B. The City Council determines these tree standards and regulations are reasonably necessary and desirable for the following reasons:

1. Trees are proven producers of oxygen, a necessary element for the survival of mankind;

2. Trees appreciably reduce the ever-increasing and environmentally dangerous carbon dioxide content of the air and play a vital role in purifying the air;

3. Trees play an important role in the hydrologic cycle, transpiring considerable amounts of water daily day, thereby precipitating dust and other particulate airborne pollutants from the air;

4. Trees play an integral role in neutralizing wastewater which passes from the surface to lower ground water aquifers;

5. Trees through their root systems, stabilize the soil and play an important and effective part in City-wide soil conservation, erosion control and flood control;

6. Trees are essential and an invaluable physical and psychological addition to the City, making life more comfortable by providing shade and cooling both air and land, reducing noise levels and glare, and breaking the visual monotony of development of land;

7. Trees provide wildlife habitat and play other important ecological roles;

8. The protection of trees within the city of Missoula is not only desirable, but essential to the present and future health, safety, and general welfare of all the citizens of City of Missoula;

9. Some tree species are more beneficial than others as necessary contributors to the City's environment and it is not necessary to protect each and every tree in order to attain the public benefit of a tree protection and replacement ordinance.

C. The provisions of this ordinance shall apply to all trees and shrubs presently or hereafter planted in or upon any public area, which shall endanger the life, health or safety of persons or property. (Ord. 3043, 1997; Ord. 2807 §1, 1992).

12.32.020 The City Tree Board. The City Tree Board shall serve as the appellate body for property owner appeals to City Park and Recreation Department decisions pertaining to woody vegetation located in any public right of way, as well as an advisory body to the City Council and shall perform any functions, responsibilities or duties established herein. (Ord. 3043, 1997; Ord. 3034, 1997; Ord. 2807 §2, 1992).

12.32.030 ~~City forester~~Urban Forester--Establishment--Duties.

Commented [SR112]: Check with Planning - should this go in UDC Chapter 2?

A. The position of ~~City~~ Urban Forester may be established within the City Parks and Recreation Department and is responsible to the City Parks and Recreation Director.

B. The ~~City~~ Urban Forester shall perform any duties determined by the City Council and The Parks and Recreation director and shall assist the Park Board with the Park Board's statutory responsibility to plant, cultivate, maintain and improve all trees and other plants upon the streets, avenues, boulevards, and public places, including the Park Board's right to

designate the character and quality of all trees and plants planted in such parks, streets, avenues, boulevards and public places. (Ord. 3043, 1997; Ord. 2807 §3, 1992)

12.32.040 Scope of applicability.

A. This chapter applies to all trees, plants and shrubs located on or in the right-of-way, boulevards, and public places of the city, and to private property trees that encroach, and/or create a condition which renders dangerous for passage on any public right-of-way, boulevards and public places, except for all woody vegetation located within the boundaries of the city cemetery while it is managed by a city cemetery staff.

B. The provision of this ordinance pertaining to planting, spacing, or species of tree shall not apply to any tree existing at the time of the enactment of this ordinance. (Ord. 3043, 1997; Ord. 2807 §4, 1992).

12.32.050 Definitions. The following definitions shall apply to the provisions of this chapter.

A. "Public right-of-way" means the entire width between the dedicated boundaries of all public streets, roads, boulevards, alleys and includes all sidewalks and public parking strips located within any such boundaries.

B. "Public area" means all public right-of-ways, public parks, and other lands owned or leased by the city, unless the context of a specific provision expressly applies to other public lands as well.

C. "Woody vegetation" means trees, shrubs, plants and any other vegetation with a woody stem.

D. "Encroaching woody vegetation" means any woody vegetation that grows or extends within the boundaries of the public right-of-way, which renders it dangerous for passage.

E. "Tree preservation zone" or "TPZ" is a circle surrounding the target tree with a radius of one (1) foot for every one (1) inch diameter of tree being considered.

F. "Boulevard trees" means any tree which exists in an area of public right-of-way between the edge of the public roadway, whether curbed or not, and the private property line.

G. "Park trees" means all trees on city owned or leased land other than trees that are in the public right-of-way.

H. "Arboricultural treatments" means all services, treatments or operations involving trimming, pruning, spraying, injecting, fertilizing, cabling, surgery work, removal of and cutting above or below ground level of a tree.

I. "Topping" means the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal tree canopy and disfigure the tree.

J. "Notice" means a written or verbal announcement to the abutting property owner.

K. "Tree Board" means an appointed sub-committee comprised of 4 members of the City Park and Recreation Board. (Ord. 3043, 1997; Ord. 3034, 1997; Ord. 2807 §5, 1992) .

12.32.060 Permit requirement. It is unlawful for any person or contracted tree service person to engage in the business of planting or arboricultural treatment of trees within the public right-of-way or public area, without written consent obtained by issuance of a permit by the City Parks and Recreation Department. (Ord. 3043, 1997; Ord. 2807 §6, 1992) .

12.32.070 Responsibility for trees.

A. The abutting property owner shall be responsible for the regular watering, care and maintenance of the boulevard or parking strip per MMC section 12.48.030. The City Council and/or City Parks Department may require any property owner to teat or remove any woody vegetation in a parking strip abutting upon the owner's property.

B. The City Parks Department may take action to remove, or treat any tree on public land if it:

1. is diagnosed to have an epidemic insect infestation or disease that would prove to be detrimental to the Urban Forest; or

2. creates a hazard or an immediate threat to public safety, and assess the cost of such action against the abutting property owner; or

3. is identified as a tree that would be either an obstruction or would not live after a street, sidewalk, curb and gutter, alley or public utility construction or maintenance project is implemented. (Ord. 3043, 1997; Ord. 2807 §7, 1992).

12.32.080 Licensing. All contracted arboricultural work or services performed by businesses advertising or soliciting performance of services on trees within the City, whether public or private, shall obtain a city business license from the city prior to performing any work. (Ord. 3043, 1997; Ord. 2807 §8, 1992).

~~**12.32.090 Landscaping required for new developments.** Trees shall be a part of the landscaping for all new residential developments and new commercial developments and will be consistent with city zoning ordinance. All tree plans shall be evaluated by the Office of Community Development and the Parks Department as part of the development review. (Ord. 3043, 1997; Ord. 2807 §9, 1992).~~

12.32.095 Tree Requirements for Public Trees. Street tree planting shall be conducted in accordance with City of Missoula standards and specifications.~~Tree planting minimum requirements for rights-of-way and city owned parcels are detailed in the City of Missoula, Parks and Recreation Design Manual.~~

12.32.100 Public utilities. Public Utility work affecting woody vegetation within public areas should be limited to the actual necessities of the services of the company and all work should be done in a neat and professional manner consistent with National Arborist Association and International Society of Arboricultural standards on tree maintenance. The City Parks and Recreation Department shall be notified before work is performed and reserves the right to inspect work after completion. (Ord. 3043, 1997; Ord. 2807 §10, 1992) .

12.32.110 Vandalism or damage to woody vegetation. It is unlawful for any person to abuse, injure, mutilate, destroy, or kill any tree, shrub or plant growing in the public right-of-way or to permit any animal under his control to do so. Unlawful conduct shall include but not be limited to permitting any fire to injure any portion of any tree or shrub; permitting any toxic chemical to seep, drain, or be emptied on or around any woody vegetation; permitting the storage of any stone, brick, sand concrete or other materials which may impede the free passage of water, air and fertilizer to the roots of any tree or shrub growing herein; permitting any wire charged with electricity to come in contact with any tree or shrub, located within any public area, or any general destruction or mutilation by whatever means. The party responsible for any such act shall bear the cost of repairing or replacing the tree or vegetation pursuant to the determination of the City Parks and Recreation Department. (Ord. 3043, 1997; Ord. 2807 §11, 1992).

12.32.120 Providing barriers during construction. Adequate barriers will be placed around trees growing in the public right-of-way to protect the trunk and limbs from damage due to construction work. Excavation taking place within the "tree preservation zone" of any tree growing in the public right-of-way will require a permit from Development Services staff and the City Parks Department. The City Parks and Recreation Department will inspect all such excavations to ensure minimum damage to tree roots. When trees are damaged severely, as determined by the Parks Department, due to excavation or construction, the abutting property owner shall be responsible for planting a new tree pursuant to the City Parks Department specifications, except where contractor negligence damaged the tree in which case the contractor shall be responsible for repairing or replacement of the tree. (Ord. 3492, 2013; Ord. 3043, 1997; Ord. 2807 §12, 1992).

12. 32.130 Attaching ropes, wires or handbills to trees in a public place. It shall be a violation of this chapter to attach or place any rope, cable or wire (other than one used to support a young or broken tree or to support a weak crotch within the tree), nail or otherwise place any sign, poster, handbill or other thing to any tree growing in a public place, except in emergencies such as accidents and storms. (Ord. 3043, 1997; Ord. 2807 §13, 1992).

12.32.140 Tree topping. It shall be unlawful, as a normal practice for any person, tree service business, city department or any other private or public entity to top any street tree, park tree or other tree located in a public area. Trees severely damaged by storms or other obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the conservation committee. (Ord. 3043, 1997; Ord. 2807 §14, 1992).

12.32.150 Declaration of hazard.

A. Any woody vegetation, whether on public or private property, of whatever nature, which is endangering or which in any way may endanger the public health, safety, security or usefulness of any public street, public utility line or sidewalk is

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hereby declared to be a public hazard and may be treated by the City Parks and Recreation Departments. If the City Parks and Recreation Department determines with reasonable certainty, upon inspection, that any woody vegetation or any part thereof, located on private property, that encroaches into the public right-of-way or renders it dangerous for passage, it shall notify in writing the owner or tenant in charge of the premises. If the owner or tenant in charge of the premise where the hazard is located, is unable to comply with the terms of the written notice, the City Parks and Recreation Department will work with the property owner where the hazard is located to cause the treatment or removal of the hazard woody vegetation. The private property owner shall be responsible for any liability arising out of injury, damage, or death caused by the dangerous condition existing on the private property. The city shall not be liable for any injury, damage, or death caused by the said hazard or dangerous condition on private property. (Ord. 3043, 1997; Ord. 2807 §15, 1992).

12.32.160 Tree planting, maintenance and removal. All trees and/or shrubs in any public area shall be planted, removed maintained and protected according to the provisions of the arboricultural standards, specifications and guidelines shall include sections on planting, maintenance, removals and a desirable species list, and will be reviewed annually by the conservation committee and city council. (Ord. 3043, 1997; Ord. 2807 §16, 1992).

12.32.170 Interference with city parks and recreation department. No person shall obstruct, hinder, prevent, delay or interfere with the City Parks and Recreation Department in the execution or enforcement of this chapter. (Ord. 3043, 1997; Ord. 2807 §17, 1992).

12.32.180 Appeal from order of city parks and recreation department. Any decision of the City Parks and Recreation Department must be appealed within fifteen (15) calendar days after notice is given to the property owner (Ord. 3043, 1997; Ord. 3034, 1997; Ord. 2807 §18, 1992).

12.32.190 Penalties. No imprisonment shall be imposed for a violation of this chapter. The only penalty shall be a fine of up to five hundred dollars ($500.00) for each separate offense, each day during which any violation of the provisions of this ordinance shall occur or continue shall be a separate offense.

A. Upon conviction as part of the sentence imposed in addition to the penalty set forth in Subsection (a) above, any person who removes, damages, or destroys a tree, shrub, or other plant located on city-owned property in violation of the provisions of this Article shall pay a sum of money equal to either the cost of its replacement or the diminishment in its value. The replacement value of trees and shrubs shall be determined in accordance with the latest revision of *Guide to Tree and Plant Appraisal,* as published by the International Society of Arboriculture. (Ord. 3043, 1997; Ord. 3034, 1997; Ord. 2807 §19, 1992).

12.32.200 Tree Appendix. An appendix outlining operational standards, procedures, desirable tree lists and other regulations pertaining to the operation of the City Forestry program as well as the operation of “for profit” private companies accompanies the enactment of this ordinance. The appendix is available in the City Clerks office and at the Parks and Recreation Department. (Ord. 3043, 1997)

12.32.210 Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, and if for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect. (Ord. 3043, 1997)

Chapter 12.36

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~~POLES AND WIRES~~

~~Sections:~~

~~12.36.010 Prohibited over paved streets—Underground conduits--Removal~~.
~~12.36.020 Construction of telephone and telegraph lines--Notice required~~.
~~12.36.030 Construction of telephone and telegraph lines--Map requirement~~.
~~12.36.040 Location of poles~~.
~~12.36.050 Location of wires~~.

12.36.060 Construction of conduits, manholes and laterals.
12.36.070 Overhead wires--Insulation and supports.
12.36.080 Overhead wires--Joints, flux and wrapping.
12.36.090 Overhead wires--Location generally.
12.36.100 Overhead wires--Separation and glass insulators.
12.36.110 Overhead wires--Specifications for entering buildings.
12.36.120 Outside service wires.
12.36.130 Stringing wires from poles to buildings.
12.36.140 Location of outside conductors and cable Supports--Support structures on roofs.
12.36.150 Transformers and secondaries grounding requirement.
12.36.160 Insulation of guy wires.
12.36.170 Electric light or power wires--Not to cross fire alarm wires.
12.36.180 Electric light or power wires--Not to interfere by contact or induction with fire alarm wires.
12.36.190 Electric light or power wires--Procedure in event of interference with fire alarm wires.
12.36.200 Disposition of dead wires and unused poles --Removal notice.

12.36.010 Prohibited over paved streets--Underground conduits--Removal. No poles shall be placed on paved streets and no wires shall be placed along such streets above the ground, but the same shall be placed in underground conduits on the street. In the event that the city shall hereafter determine to pave any street upon which poles have been erected in accordance with the provisions of this chapter, the city council may require the removal of such poles and that the wires strung thereon be placed in underground conduits, at the utility owners' expense. (Ord. 3709, 2023; Prior code §28-110).

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12.36.020 Construction of telephone and telegraph lines--Notice required. Any person desiring and intending to construct and maintain a line of telegraph or telephone within the city shall file with the city clerk of the city a written notice of such desire or intention. (Prior code §28-111).

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12.36.030 Construction of telephone and telegraph lines--Map requirement. Upon the filing of any such notice the city council shall, at its first regular meeting thereafter, instruct the city engineer to designate the places upon and along the streets, avenues and alleys of the city where poles may be located; thereafter, upon the presentation to and filing with the city engineer of a plat or map showing the proposed line or route of such telegraph or telephone line, the city engineer shall immediately designate upon such map or plat the place or places upon and along the streets, avenues or alleys where poles may be located and erected, which designation shall be subject to and in conformity with the provisions of this chapter. (Prior code §28-112).

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12.36.040 Location of poles. Poles shall be located on streets and avenues immediately inside of the curbs and on the line dividing the lots one from the other so far as practicable. Poles shall be placed in the alleys as near the sides thereof as practicable, and in such manner as to occasion no unreasonable inconvenience to the public or to adjoining property owners. In no case shall poles be placed so as to interfere with any sewer or any part of the drainage system of the city, or with any gas or water main or pipe. Nor shall any poles be placed so as to interfere with free access to the entrance or exits of any building or buildings, yard or grounds. (Prior code §28-125).

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12.36.050 Location of wires. All wires, except service wires, shall be placed not less than twenty-five feet above the ground, and no wires shall be placed so as to interfere with the proper and successful operation of the wires of any person. (Prior code §28-126).

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12.36.060 Construction of conduits, manholes and laterals. The conduits, manholes and laterals necessary for the maintenance and operation of underground wires shall be constructed under the supervision of the city engineer, and shall be so located and constructed as not to interfere with any sewer, gas or water main or pipe. (Prior code §28-127).

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12.36.070 Overhead wires--Insulation and supports. All outside overhead electric light and power wires must be covered with some material of high insulating power and not easily abraded; they must be firmly secured to properly insulated and substantially built supports; and all such wires must have an insulation equal to that of conducting wires. (Prior code §28-113).

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12.36.080 Overhead wires--Joints, flux and wrapping. All joints in wires must be so made that a perfectly secure and unvarying connection fully equal to the cross section of the conducting wire will be secured, and they must be soldered. Nothing but an acid solution shall be used as a flux, and any excess must be washed off before the splice is covered. All joints must be securely wrapped with tape approved by the city electrician. (Prior code §28-114).

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12.36.090 Overhead wires--Location generally. Care must be taken that the outside conducting wires are not placed in such a position that it would be easy for water or any liquid to form cross connections between them, and they should not approach each other nearer than one foot. The wires must never be allowed to come in contact with any substance other than their supports. (Prior code §28-115).

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12.36.100 Overhead wires--Separation and glass insulators. Outside overhead wires from the main circuit or pole in the street or alley to the terminal insulators attached to the building, and at the point where they enter the building must not be less than twelve inches apart. They must be rigidly and neatly run and supported by glass insulators. (Prior code §28-116).

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12.36.110 Overhead wires--Specifications for entering buildings. For entering buildings, wires must be protected by a continuous covering of hard rubber or glass, and such covering must project at least two inches on each side of the wall. The wires must loop down so that the water may drip off without entering the building, and the holes through which they enter must, where possible, slant upward from the outside. (Prior code §28-117).

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12.36.120 Outside service wires. Outside service wires must come in contact with nothing save air and their insulating supports. (Prior code §28-118).

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12.36.130 Stringing wires from poles to buildings. Every person stringing any wire or wires from poles erected in any street or alley in the city to any building in the city shall string the wire or wires so that the wire or wires shall first connect with the buildings at the top thereof. (Prior code §28-128).

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12.36.140 Location of outside conductors and cable--Supports--Support structures on roofs. All outside conducting wires, cables or conductors carrying electric current for light, heat or power and all other wires within the city and carried over buildings in the city must be at least seven feet above the highest point of flat roofs and three feet above the ridge of pitched roofs, and supported in a substantial manner so as to prevent the wires from sagging on roofs. All structures placed upon roofs for the support of wires, cables or conductors shall be placed, constructed and maintained in a manner satisfactory to the city electrician. (Prior code §28-129).

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12.36.150 Transformers and secondaries rounding requirement. Transformers and secondaries of alternating current distributing systems must be grounded. Two-wire current systems having no accessible neutral point are not to be grounded. (Prior code §28-123).

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12.36.160 Insulation of guy wires. All guy wires for supporting or guying poles carrying electric light and power wires, and telephone, telegraph or other wires, must be insulated from electrical connection with the ground by an approved strain insulation or insulators inserted in the guy wire. (Prior code §28-124).

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12.36.170 Electric light or power wires--Not to cross fire alarm wires. Whenever it is necessary for any electric light or power wire to approach or cross the line of any fire alarm, police telegraph, telegraph or telephone wire, the same shall not approach to or cross either of such wires at a distance of less than four feet either above or below the fire alarm, police telegraph, telegraph or telephone wires, and shall be securely fastened on supports placed as near as practicable to the fire alarm or other wire, or shall be carried in troughs or boxes across the route of such fire alarm or other wire, so constructed and placed as to prevent the electric light or power wire and telegraph, fire alarm or telephone lines coming in direct contact in case either should break or become detached from fixtures. (Prior code §28-119).

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12.36.180 Electric light or power wires--Not to interfere by contact or induction with fire alarm wires. No wires used on conductors for electric lighting or power purposes or carrying other strong currents of electricity shall be erected, placed or maintained so as to interfere by contact, induction or otherwise with the successful operation of any fire alarm, police telegraph, telegraph or telephone wire, circuit or instrument, nor shall the same be constructed or maintained on the same side of the street where any fire alarm, police telegraph or telephone wire, circuit or instrument is placed or situated. (Prior code §28-120).

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12.36.190 Electric light or power wires--Procedure in event of interference with fire alarm wires. Whenever any wire used as a conductor for electric lighting or power purposes, or carrying a strong current of electricity, shall be so erected, placed or maintained as to violate any of the provisions of this chapter, or so as to interfere by contact, induction or otherwise with the successful operation of any fire alarm, police telegraph, telegraph or telephone wire, circuit or instrument, the city electrician or any person owning or entitled to the use of any such fire alarm, police telegraph, telegraph or telephone wire, circuit or instrument may serve upon the person or his manager, agent or officer operating

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any such wires used for electric lighting or power purposes, or carrying other strong current of electricity, a written notice stating the manner and place where such wires are so erected, placed and maintained; and upon receipt of such notice it shall be the duty of such person, agent or officer so served to remove all such wires specified in such notice, which are erected, placed or maintained in violation of the provisions of this chapter. In case they fail to do so, the same may be removed by the order of the chief of police at their expense. (Prior code §28-121).

12.36.200 Disposition of dead wires and unused poles--Removal notice. It shall be the duty of the city electrician to cause all dead wires, unused poles or electric apparatus on the outside of buildings, or in streets or alleys, to be removed at the expense of the owner of such wires, poles or apparatus, by giving the owner or his agent ten days written notice. If the owner or his agent fails or neglects to remove the same after the notice has been given, such owner or his agent shall be subject to a penalty of ten dollars for each and every day such wires, poles or apparatus are permitted to remain up. (Prior code §28-122).

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Chapter 12.40

CITY PARKS

Sections:

12.40.005 Purpose.
12.40.007 Definitions
12.40.010 Parks, Trails, Conservation Lands -- Closed hours.
12.40.020 Parks, Trails, Conservation Lands – operation and parking of motorized vehicles.
12.40.030 (Repealed).
12.40.035 Parks, Trails, Conservation Lands – Public Safety.
12.40.040 Alcoholic Beverages in City Parks.
12.40.050 (Repealed).
12.40.055 (Repealed).
12.40.057 Alcohol Beverage Permit
12.40.060 (Repealed).
12.40.065 Prohibited Conduct at City of Missoula parks, trails, and conservation lands.
12.40.070 (Repealed).
12.40.080 Enforcement and Penalties.

12.40.005 Purpose. It is the purpose of this chapter to encourage and enhance the public's recreational experience and use of City owned public parks, trails, and conservation lands within the City; while at the same time establishing reasonable restrictions and limitations intended to preserve and protect these lands and the people using these lands as well as the native vegetation on some of these lands and the wildlife that live in or use these lands and to allow the public's shared multi-purpose use of these lands to be a more satisfying and pleasurable recreational experience. Many of these lands will also be administered and managed pursuant to City adopted land management plans. (Ord. 3641, 2019; Ord. 2999, 1996)

12.40.007 Definitions. The following definitions shall be applicable to the provisions of this chapter:

Authorized Persons shall mean City employees acting within the course and scope of their employment as well as individuals authorized by the Mayor, City Police or Fire Chief or Parks and Recreation Department Director or their designee and employees of the County Sheriff, Montana Fish, Wildlife and Parks and State Department of Natural Resources and Conservation and United States Department of Agriculture and of public utilities responding to an emergency.

Conservation Lands are public lands that exist in a primarily natural state. They support wildlife and native plants and may also serve to store flood water and recharge our aquifer. Conservation Lands also may support secondary uses such as developed recreation and education areas and related facilities, where such activities are compatible.

Motorized Vehicle means a vehicle propelled by internal combustion or electric motor, including but not limited to: automobiles, motorized bicycles, scooters and skateboards; motorcycles; utility terrain or utility task vehicles (UTVs); and all-terrain vehicles (ATV).

Park Lands are public lands dedicated for park and recreation use. These lands are often, but not always developed with recreational facilities and landscaping. They also may have natural values and functions.

Primary Commuter Trails are trails with the primary management goal being to move commuters through the City, along with the benefits of supporting recreation activities. They include the Northside Greenway, the Bitterroot Trail, Ron's River Trail, the Milwaukee Trail, Grant Creek Trail, Rattlesnake-University Connection (RUX), and other trails and connectors as shown in Exhibit A, and any trail officially designated and posted as a Primary Commuter Trail.

Trails are paved or unpaved paths that serve as connectors, recreation areas, and fitness loops for walking, hiking, biking, horseback riding and other activities which allow one to move from one point to another for purposes of travel, fitness, recreation, and access. Trails may be multi-use or single-use. (Ord. 3641, 2019)

12.40.010 Parks, Trails, Conservation Lands -- Closed hours.

A. Unless otherwise posted or authorized, all city owned or city managed public parks, trails, and conservation lands shall be closed to all but city authorized persons between the hours of eleven p.m. and six a.m. each day, with the exception of designated Primary Commuter Trails, which shall be open to use 24 hours per day.

B. Repealed

C. It is unlawful for anyone other than authorized persons to be in any city owned public park, trail, or conservation land if the area has been temporarily closed for fire danger, seasonal closure on behalf of wildlife, erosion control, seeding or other land rehabilitations activity, tree trimming or cutting, public safety, or any other reason deemed necessary for temporary closure purposes by the city pursuant to land management plans or otherwise.

(Ord. 3747, 2024; Ord. 3641, 2019; Ord. 2999, 1996; Ord. 2859 §1, 1993; Ord. 2844 §1, 1993; prior code §21-16.1).

12.40.020 Parks, Trails, Conservation Lands – operation and parking of motorized vehicles.

A. It is unlawful for any person or persons to operate or park any motorized vehicle as defined in Section 12.40.007 within any city owned public park, trail or conservation land under the supervision and management of the city unless otherwise specifically provided for in this section; with the following exceptions:

1. Motorized vehicles may only be operated or parked in designated parking lanes, parking areas, and parking lots within City parks and open space trailheads for the purpose of park and trail use, and shall comply with posted time limits, and
2. Class 1 and class 2 electrically assisted bicycles, as defined in Section 10.02.094 MMC, may be operated upon Primary Commuter Trails.

B. This section shall not be construed to prohibit vehicles operated by Authorized Persons from use of any park, trail, or conservation land; nor shall it be construed to limit the right of individuals with disabilities from using other mechanical or electrical powered mobility devices (also known as other power-driven mobility devices, or OPDMDs, as further defined by federal law) as allowed by the Americans with Disabilities Act. Employees of public utilities acting in the scope and course of their employment may operate vehicles in parks, trails and conservations lands pursuant to applicable easement terms; where the easement is silent regarding notice, such public utilities must give at least 72 hours advance notice to the City Parks and Recreation Department Director or their designee.
(Ord. 3650, 2019; Ord. 3641, 2019; Ord. 2999, 1996; Prior code §21-16.2).

12.40.030 (Repealed)
(Ord. 3641, 2019; Ord. 2999, 1996; Ord. 2859 §2, 1993; prior code §21-16.3).

12.40.035 Parks, Trails, Conservation Lands – Public Safety.

A. Trail Safety. The Parks and Recreation Board or the Parks and Recreation Director may establish administrative operating rules and polices applicable to any City trail. The Missoula City Council hereby declares that it is unlawful for any person to engage in any of the following conduct on a City trail:

1. Travelling on trails in excess of any posted speed limit, or failing to travel in a careful and prudent manner and at a reduced rate of speed no greater than is reasonable and prudent under the conditions existing, taking into account the amount and character of traffic, other trail users' safety, visibility, weather, and trail conditions**.**

2. Operating a bicycle or scooter and failing to yield the right-of-way to any pedestrian, horseback rider, or failing to give an audible warning before overtaking and passing such a pedestrian, horseback rider, or another cyclist. The audible warning may be given by the voice or by a bell or other lawful device capable of giving an audible signal to the person or persons being overtaken and passed.

B. City of Missoula Skatepark Safety. The City Parks and Recreation Board or the City Parks and Recreation Director may establish administrative operating rules and polices applicable to any City skatepark. The Missoula City Council hereby declares that it is unlawful for any person to engage in any of the following conduct within any City skatepark:

1. If under the age of 18, skateboarding, inline skating, or scooter riding on skateable surfaces without wearing a properly fastened helmet that is specifically sold as a helmet for skateboarding or inline skating. Helmets are strongly recommended for all users.

2. Skateboarding, inline skating, and use of non-motorized scooters or otherwise being present on the skateable surfaces during any hours when posted signs indicate that such skatepark is closed and usage is not allowed.

3. Using bicycles or motorized vehicles on the skateable surfaces within the skatepark area.

4. Placing or using ramps, tables, benches or other objects not constructed as an integral part of the skatepark within the skateable surface areas.

5. Skating, scootering, or attempting to skate on the skateable surface areas during rain, sleet, or snowy conditions or when the surface of the skatepark is wet, snowy, or icy.

6. Using alcohol, tobacco, including vaping and e-cigarettes, or unlawful drugs within any part of the skatepark area.

7. Allowing or possessing any animals within the skatepark skate area.

8. Littering or defacing features, including placing stickers or graffiti, within the skatepark complex.

9. Possessing any glass or ceramic container while on the skatepark skateable surface areas.

C. Bike Park Safety. The Parks and Recreation Board or the Parks and Recreation Director may establish administrative operating rules and polices applicable to any City bike park. The Missoula City Council hereby declares that it is unlawful for any person to engage in any of the following conduct within any City bike park:

1. Being present in the bike park after dusk or after 10p.m., whichever is earlier.

2. If under the age of 18, riding without wearing a properly fastened helmet that is specifically sold as a helmet for bicycling. Helmets are strongly recommended for all users.

3. Riding on park features, turf, or trails when they are wet, icy, or slippery.

4. Altering the course or adding features or other obstacles.

5. Using alcohol, tobacco, including vaping and e-cigarettes, or unlawful drugs within any part of the bike park area.

6. Allowing or possessing any animals within the bike course skills area.

7. Littering within the bike park complex.

8. Possessing any glass or ceramic container.

D. Hunting Pursuant to Block Management.

1. Hunting is not permitted in any city park, trail, or conservation land except when specifically designated in partnership with MT Fish, Wildlife and Parks as a Block Management area for limited archery access.

E. Trapping on City Parks, Trails, Conservation Lands

1. Trapping, including the use of any body-gripping trap or snare, is not permitted in any city park, trail, or conservation land, except for management as authorized by the Parks and Recreation Director, or their designee. (Ord. 3671, 2020; Ord. 3641, 2019)

12.40.040 Alcoholic beverages in parks.

A. Consumption of alcoholic beverages is permitted, with restrictions and requirements, in some City Parks.

1. Unless otherwise authorized by the Parks and Recreation Director or designee, consumption of alcoholic beverages is permitted only during the hours from eleven a.m. to eleven p.m. It shall be unlawful to possess alcoholic beverages in any city park, open space or trail area between the hours of eleven p.m. and eleven a.m. with the exception of Primary Commuter Trails, which allows for transportation of alcoholic beverages only.

2. Glass containers are not allowed; except as authorized by Section 12.40.057, Missoula Municipal Code.

3. Alcoholic beverage means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume. The terms beer, wine, and hard cider are used as defined in § 16-1-106, Montana Code Annotated.

B. It is unlawful for any individual or group of individuals to possess alcoholic beverages of any kind in the follow parks, open space, or trail areas: (1) Greenough including adjoining Alvina Park; (2) Jacobs Island Park; (3) Clark Fork Natural Area; (4) Downtown Lions Park (5) Hellgate Park (6) Kim Williams Natural Area; (7) Ben Hughes Park; (8) West Broadway Island Park; (9) City skate parks and bike parks; (10) any Primary Commuter Trail, including over/under or at grade crossings, pedestrian bridges and tunnels, except that possession of unopened alcoholic beverages for the purposes of transport is authorized; (11) any park, open space, or trail area that serves primarily as a wetlands, or does not have public restrooms available within the specific park, open space, or trail area; (12) school-partnership parks lands, including Toole Park, Westside Park, Rattlesnake (PEAS) Farm and Playing Field; (13) at, in, upon, or within any children's playground or spray deck, or within any playing field or dugout during a game or practice, (13) any parking lot within or serving a trailhead for conservation lands or trails, or a park, unless expressly authorized by the Parks and Recreation Director or designee, and (14) any park, trail, or open space posted as alcohol free or alcohol-prohibited or officially designated as being alcohol-free in the attached Exhibit B.

C. For persons who pursuant to Montana law are legally old enough to consume and possess alcoholic beverages, such beverages are allowed to be possessed and consumed in certain parks and conservations lands as authorized and provided below. See Missoula Municipal Code sections 12.40.040 A and B and 12.40.057 for requirements and limitations. See Exhibit B for a listing of locations, allowances, permit types.

1) In McCormick Park, McCormick Park Recreation Building/aquatics facility, Caras and East Parks, Bess Reed, BN/Circle Square, Kiwanis Park, Memorial Rose Garden Park, Playfair Park, Silver Park, and Fort Missoula Regional Park the possession or consumption of beer, wine, and hard cider by an individual or group is allowed only pursuant to a permit obtained from the City Parks and Recreation Department pursuant to section 12.40.057, Missoula Municipal Code. Possession of alcoholic beverages in any of the parks listed in this subsection without a permit is unlawful, except that unopened alcoholic beverages may be transported through these parks lawfully and without a permit.

2) Possession and consumption of beer, wine and hard cider is allowed for individuals or small groups of six or less without permit, or for groups of seven or more with a permit, in parks not listed in subsection B or C.1

above where a restroom or portable toilet is provided and is available, see Exhibit B for a list of parks where possession and consumption of beer, wine, and hard cider is allowed pursuant to this section.

3) It is unlawful for any individual or group of individuals to possess an alcoholic beverage for the purpose of consumption upon City Conservation Lands; with the exception that the possession and consumption of beer, wine, and hard cider is allowed for individuals or groups of four or less on City Conservation Trails and Overlooks if they are at least 100 yards away from any parking area, street right-of-way, trailhead, private property, wetland, stream or creek.

4) With the exception of beer, wine, and hard cider, possession or consumption of an alcoholic beverage is not allowed at any City Park or Conservation Land; however, the City may authorize the possession and consumption of all alcoholic beverages within the Caras Park Pavilion and the Fort Missoula Bella Vista Pavilion pursuant to a permit issued under 12.40.057, Missoula Municipal Code.

5) Alcoholic beverages are allowed at Public Markets where authorized by City Council by Resolution, subject to the hours and rules listed in the applicable Resolution.

(Ord. 3641, 2019; Ord. 3136, 2000; Ord. 2955, 1995; Ord. 2461 §1, 1985; Ord. 1825, 1977).

12.40.050 (Repealed)

(Ord. 3641, 2019; Ord. 3317, 2006; Ord. 3136, 2000; Ord. 3012, 1996; Ord. 2999, 1996; Ord. 2955, 1995; Ord. 2859 §3, 1993).

12.40.055 (Repealed)
(Ord. 3641, 2019; Ord. 3317 §2, 2006)

12.40.057 Alcohol Beverage Permit.

A. The permits required by the provisions of 12.40.040, Missoula Municipal Code, shall comply with the conditions and requirements of this Section. A permit issued by the Parks and Recreation Director or designee pursuant to this Section may extend the hours where possession of alcoholic beverages in City parks is authorized.

B. All permits pertaining to possession of alcohol in any City park shall be subject to the following conditions:

1. Permit fees and deposits shall be established by the City Council pursuant to resolution establishing City park and recreation fees.

2. Any permit fee and/or deposit must be paid prior to alcohol being consumed in any City park.

3. No glass alcohol beverage containers shall be allowed within any Parks, Trails or Conservation Lands, except that state licensed caterers and distributors may possess glass beverage containers for the purpose of pouring into a non-glass consumer container.

4. City park users must clean up the park or area to a state at least as clean as when they arrived and any permit holder shall be solely responsible for the immediate and timely picking up and removal or proper disposal of garbage at the location where the permittee is present within any city park, open space or trail area.

5. The individual or group of individuals in whose name the permit is issued shall be responsible for having the permit present at the site, informing and supervising others with respect to the compliance with state and local law, the safety, sobriety, conduct and behavior of each member of the group as well as cleaning up the park area prior to, during or immediately at the conclusion of the permit's authorized time period for possessing alcohol in the park, open space or trail area. (Ord. 3641, 2019; Ord. 3136, 2000; Ord. 2955, 1995; Ord. 2461 §1, 1985; Ord. 1825, 1977).

12.40.060 (Repealed) (Ord. 3641, 2019; Ord. 3136, 2000)

12.40.065 Prohibited Conduct at City of Missoula parks, trails, and conservation lands.

A. Unless used by Authorized Persons with the authorization of the Director of the City Parks and Recreation Department, the following activities are prohibited in any Missoula city park, trail, or conservation lands, without express written permission of Parks and Recreation Director or his or her designee. The City Parks and Recreation Board or City Parks and Recreation Director may establish administrative operating rules and policies in addition to the prohibitions set forth herein.

1. With the exception of vehicles, leaving personal property unattended (outside of visual sight) Unattended items will be removed from play areas, doorways, pathways, spray decks, pools and placed in Parks and Recreation lost and found for 5 days. Unattended vehicles are subject to removal after 5 days pursuant to Section 61-12-401 MCA;

2. Discharging any bow, crossbow or other similar device which is calculated to propel or project an arrow or dart, unless the City designates an area as a public archery range or within a designated hunting area managed through FWP's block management program;

3. Flying or launching powered model airplanes, rockets, drones, or other unmanned aerial systems except as authorized by permit;

4. Launching or driving golf balls;

5. Cutting or sawing any live or dead trees or woody vegetation or their parts with any type of equipment, power or otherwise or remove any live or dead trees except by written permission of the Parks and Recreation Director or his or her designee in accordance with Chapter 12.32;

6. No signs, notices, decorations or objects of any kind shall be attached to, located on or painted on any part of park property; except as authorized by Parks and Recreation through an approved permit;

7. Installing inflatable structures; except as authorized by Parks and Recreation through an approved permit and only from a vendor who holds an Inflatable Structures Vendor Agreement with the Parks and Recreation Department;

8. Conducting or soliciting of any business, trade or occupation, private or nonprofit, including yard or garage sales, except as authorized by Parks and Recreation through an approved permit;

9. Enclosing any area, erecting any structure, or encroaching in any way onto any Park Lands;

10. Planting of vegetation or causing vegetation to be planted except by written permission of the Parks and Recreation Director or his or her designee in accordance with Chapter 12.32;

11. Digging into the surface of park property;

12. Defacing, destroying, damaging, misusing or removing any park property;

13. Interfering with or purposefully tampering, hindering or impeding with any City employee acting in the course of his or her official duties;

14. Possessing and discharging any fireworks or explosives on park property;

15. Depositing, leaving or spilling refuse or other substances other than in receptacles provided for this purpose;

16. Depositing refuse from private premises in park property trash receptacles;

17. Possessing a glass beverage container at any sports field, aquatic facility, natural pond, dog park, or playground facility;

18. Purposely throwing, tossing or otherwise propelling or breaking any glass object on park property, parking area or access road leading to park property, except that unintentional breaking of glass shall not be a violation if the broken glass is subsequently cleaned up by the party responsible for breaking the glass;

19. Urinating or defecating other than in the designated facilities provided;

20. Violating any of the regulations that are posted at individual recreation centers or Parks facilities;

21. Utilizing a playing field or trail which has been posted as closed for weather, repairs, or safety,;

22. Camping or overnight parking subject to other Missoula Municipal Code provisions authorizing overnight parking or camping in certain circumstances;

23. Unauthorized changes to trails, signage, structures, or vegetation, including unauthorized picking, trimming, or extraction of material from any tree, bush or other vegetation;

24. Open burning; and

25. Discharge of any firearm or projectile weapon or explosive of any kind, including but not limited to BB guns, pellet guns, air guns, paint ball guns, slingshots or other devices capable of causing injury to person or animals or damage or destruction to property.

26. Impeding travel or blocking any trail, unless specifically authorized by the Parks and Recreation Director or designee.

27. Travelling off, or leaving the trail on any conservation lands, unless specifically authorized by the Parks and Recreation Director or designee.

28. Moving, removing, purposefully blocking, tampering with, or altering in any way any surveillance camera or safety equipment.

29. Amplified sound is prohibited in parks with the exceptions below and further defined in Exhibit C.

    a. Small impromptu gatherings of 6 or fewer park users amplifying sound are required to adhere to restrictions set forth in Exhibit C designated as Type 2 community parks and Type 3 neighborhood parks.

    b. A fee based amplified sound permit is required for large events of 7 or more park users as set forth in Exhibit C designated as Type 1 community parks and Type 4 neighborhood parks

    c. Amplified sound is defined as any powered sound device with a volume control.

B. A person engaging in any prohibited activity may be asked to leave City Parks and Recreation property or cease prohibited activities by any enforcement personnel identified in Section 12.40.080 A. and will be subject to the penalties set forth in 12.40.080 B.

(Ord. 3685, 2021; Ord. 3641, 2019)

12.40.070. (Repealed)
(Ord. 3641, 2019; Ord. 3316, 2006)

12.40.080 Enforcement and Penalties.

A. Enforcement shall be the responsibility of the Parks and Recreation Director or his or her designee, and shall include Parks and Recreation staff and other City employees acting within their official duties, including the Missoula Police Department or the City-County Health Department.

B. A person convicted of any violation of a provision of this chapter may be punished by a fine of not less than $25 and not more than five hundred ($500.00) dollars, and;

C. Where the activity causes damage, including injury to or death of a pet due to an illegally placed trap, the cost to repair, restore, or mitigate the damage or injury shall be included in the sentencing order in addition to any fine imposed. Incarceration in a detention center shall not be a penalty for a violation of this chapter. City police officers are expressly authorized to cite and release violators of this Chapter.

D. All enforcement personnel referenced in Subsection 12.40.080A shall be authorized to:

1. Confiscate and dispose of alcohol found on persons in violation of these provisions; and

2. Spring, release or confiscate animal traps or any animal body-gripping trap or snare, found within City Parks, Trails or Conservation Lands. Found or confiscated traps will be reported and turned over to law enforcement for appropriate disposition.

(Ord. 3671, 2020; Ord. 3641, 2019; Ord. 3136, 2000)

Chapter 12.41

DISPOSITION OF CITY PARK PROPERTY

Sections:

12.41.005 Purpose.
12.41.010 Sale or Transfer of Park Property.

12.41.005 Purpose. The purposes of this chapter are as follows:

A. To implement the policies and goals with respect to non-conforming parklands as stated in the 2004 Master Parks & Recreation Plan for the Greater Missoula Area (hereinafter "Master Parks Plan");
B. To establish procedures for the sale or transfer of non-conforming parkland that in part supersede and supplement MCA 7-8-4201(2); and
C. To establish how the funds from the sale of non-conforming parkland can be used. (Ord. 3270, 2004)

12.41.010 Sale or Transfer of Park Property.

A. The City Council may sell or transfer land or an interest in land that the City owns as a public park, including any improvements on the property, subject to the following provisions:

1. Park Board Review. Before any sale or transfer of parkland is presented to the City Council for approval, it shall be reviewed by the City Parks & Recreation Board established by Chapter 2.28. The Board shall forward a written recommendation to the Council prior to the City Council public hearing for the sale or transfer of such parkland, which must include documentation of any previous agreements between the City and any neighborhood organizations or associations. The Board recommendation to sell or transfer the parkland shall be based upon an evaluation matrix adopted by the Board and approved by City Council.

2. Public Notice and Hearing. The City shall set a public hearing to allow the public to comment on the City's intention to sell or transfer such parkland and give notice of the public hearing as follows:
(i) Publish notice of the hearing and the City's intent to sell or transfer parkland in newspaper of general circulation in the City not less than thirty (30) calendar days prior to the date of the hearing;
(ii) Post copies of the notice of the hearing at conspicuous places on the parkland proposed for sale or transfer at least thirty (30) calendar days prior to the date of the hearing;

(iii) Notify by mail all property owners within three hundred (300) feet of the exterior boundaries of the parkland proposed for sale or transfer and the neighborhood council and homeowner's association for the area at least thirty (30) calendar days prior to the date of the hearing;

3. Resolution. The sale or transfer must be made by a resolution passed by a majority vote of all the members of the City Council present and voting.

B. The proceeds from the sale of parkland shall only be used to acquire public parkland or improve existing parkland that is located within the community park service area of the parkland sold per the Master Parks Plan. The City Council may designate a specific public park that the proceeds will be dedicated to for park improvements within the community park service area. (Ord. 3270, 2004)

Chapter 12.42

ALCOHOLIC BEVERAGES ON PUBLIC LANDS

Sections:

12.42.010 Purpose.
12.42.020 Permit required.
12.42.030 Requirements of permit.
12.42.040 Criteria for public interest.
12.42.050 Conditions for permit.
12.42.060 Nonapplicable to parklands.

12.42.010 Purpose. It is the purpose of this chapter to establish a procedure whereby alcoholic beverages can be served on public property in conjunction with a special event when deemed to be in the public interest by the mayor of the city if a security deposit or bond for purpose of protecting public land and public property is provided the city as protection against any damage, destruction, vandalism and/or litter to public lands or public property. (Ord. 2748 §1, 1990; Ord. 2213 §1, 1981).

12.42.020 Permit required. Alcoholic beverages may not be served on public land owned or controlled by the city unless a permit is first obtained from the mayor of the city. This permit requirement includes any special event or activity of whatever nature that occurs on city-owned or controlled property. (Ord. 2748 §2, 1990; Ord. 2213 §2, 1981).

12.42.030 Requirements of permit. The application for the permit required herein shall contain the name of the person or entity requesting the permit, the location of the proposed event, the permission of the city department head responsible for the public land involved to utilize the land for the requested function, and the day(s), time(s) and duration of the event. If the special event or use is on-going renewal of permit shall be required every two weeks and be subject to the mayor's approval. (Ord. 2748 §3, 1990; Ord. 2213 §3, 1981).

12.42.040 Criteria for public interest. In reviewing the application for a permit to serve alcoholic beverages on public land, the mayor shall consider the following factors:

A. Whether the proposed activity contributes to the cultural, recreational or entertainment opportunities available to the community;

B. The appropriateness of the public land or facilities, if any for the proposed use;

C. Any negative impact on adjacent property the proposed use might have;

D. What security, crowd control and litter control measures the applicant will be utilizing for the event or activity;

E. What the hours of the proposed use are and whether there are any residences nearby that could be disturbed by late night conduct, noise, and activity;

F. Whether the proposed activity is sponsored in whole or in part by a public agent or entity; and

G. The mayor is further authorized some discretion and flexibility for determining the amount of the damage deposit or bond in Section 12.42.050 of this code in a range from two hundred dollars to one thousand five hundred dollars in instances where a commercial establishment has conducted at least two successful special events on public lands with minimal litter control required by the city and no damage or vandalism occurring to public property. Whenever the mayor exercises discretion pursuant to this provision in addition to the criteria identified herein the mayor shall consider the estimated number of people that will likely be at the special event as well as the estimated amount of alcohol likely to be available for consumption. The mayor's determination may be appealed to the city council. (Ord. 2748 §4, 1990; Ord. 2213 §4, 1981).

12.42.050 Conditions for permit. In no event shall a permit be issued unless the following conditions are met:

A. The event for which the permit is authorized is open to, or may be attended by, members of the general public;

B. A refundable damage deposit of fifty dollars for a neighborhood residential public land use or one thousand five hundred dollars has been posted against damage, destruction, vandalism and litter at or adjacent to the location of the event or activity unless the damage deposit or a smaller bond is authorized pursuant to Section 12.42.040 of this code. The bond may not be returned until at least ten calendar days after the conclusion of the event and the mayor may deduct from any damage deposit or make claim against any bond for any reasonable city expenses for cleaning up litter and/or repairing or replacing damaged or destroyed public property or public land. All moneys collected by the city shall be deposited in the city general fund;

C. Appropriate supervision is provided by the applicant to insure adequate supervision and security; and

D. All state liquor control regulations have been complied with by the applicant, and all applicable state permits have been obtained. (Ord. 2748 §5, 1990; Ord. 2213 §5, 1981).

12.42.060 Nonapplicable to parklands. This chapter does not apply to the use of alcoholic beverages in city parklands, which is governed by Section 12.40.040 and 12.40.050 of this code; but it does apply to special events permits regulated by Chapter 12.58 of this code. (Ord. 2748 §6, 1990; Ord. 2213 §6, 1981).

Chapter 12.44

CEMETERIES

Sections:

ARTICLE I. CEMETERY

12.44.010 Established.
12.44.020 Location.
12.44.025 Repealed.
12.44.030 Records.
12.44.040 Purchases.
12.44.050 Conveyance of Assignment.
12.44.060 Cemetery funding.
12.44.070 Reserve Funds.
12.44.080 Repealed
12.44.090 Repealed
12.44.100 Repealed.
12.44.110 Grounds regulations.
12.44.120 Interment arrangements.
12.44.130 Fees.
12.44.140 Niches.
12.44.150 Use of bud vases on niche wall.
12.44.160 Repealed
12.44.170 Monument placement.
12.44.180 Missoula City Cemetery Permit for approved work.
12.44.190 Liability.

12.44.200 Infants.
12.44.210 Repealed
12.44.220 Repealed
12.44.230 Disinterments.
12.44.240 Mausoleum Section Established.
12.44.245 Sections.
12.44.250 Repealed

ARTICLE II. CEMETERY BOARD OF TRUSTEES

12.44.260 Composition.
12.44.270 Repealed
12.44.280 Organization.
12.44.290 Meetings.
12.44.300 Conflict of interest.
12.44.310 Powers and duties generally.
12.44.320 Repealed
12.44.330 Public Record.

ARTICLE III. REPEALED

12.44.340 Repealed

ARTICLE I. CEMETERY

12.44.010 Established. There is established the Missoula City Cemetery, to be operated as a cemetery for the interment of the human dead and for other purposes or acts intrinsic to the operation of a cemetery or as approved by Missoula City Council. Ownership and control thereof is assumed by the City of Missoula, and the same shall be governed, managed and controlled as provided by this chapter. (Ord. 3681, 2021; Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §1, 1994; Ord. 2866 §1, 1993).

12.44.020 Location. The Missoula City Cemetery shall be composed of that certain tract of City of Missoula owned land located in the north portion of the city (Section 8, 9, 16, and 17 Township 13N, Range 19W, Principle Montana Meridian – GPS Coordinates: TN-13N/RG19W/SEC8/17-9/16), which is owned, controlled, and used by the City of Missoula for the interment of the human dead, as well as any other uses authorized by the City of Missoula, together with such other tracts of land as the City of Missoula may hereafter acquire or designate for such purposes

(Ord. 3710, 2023; Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §2, 1994; Ord. 2866 §2, 1993).

12.44.025 Repealed. (Ord. 3532, 2014; Ord. 3292, 2005.) (Codifier's note: in 2014 12.44.025 was repealed and recodified as Chapter 12.44. Part 245.)

12.44.030 Records.

A. Register. It is the duty of the Missoula City Cemetery Superintendent or designated representative to maintain a register of all interments, disinterments, or memorials conducted in the Missoula City Cemetery; including name, age, birthplace, date of death, date of interment, and location. This register must be kept at the Missoula City Cemetery and is open to public inspection.

B. Sales. It is the duty of the Missoula City Cemetery Superintendent or designated representative to maintain a listing of all sales and documents of title/right to inter certificates issued by the Missoula City Cemetery.

C. Additional Information. The following additional information relative to interments may be included in the Missoula City Cemetery register as is available:

1. Personal Data. Last known address, age, sex, date of birth, marital status, mortuary or crematory contact, next of kin or personal representative of the estate contact information, veteran status, and liner or vault usages.

2. Pre-needs. The Missoula City Cemetery Superintendent or designated representative is to maintain a current plat map system depicting all interment locations, names of all individuals interred in such locations, and names and locations of all pre-paid graves, niches, mausoleums, or cremation locations pending their use.

3. Fees. Interment records are to contain an itemization of all related fees, payer, receipt number, type of payment tendered, and date paid.

(Ord. 3681, 2021; Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §3, 1994; Ord. 2866 §3, 1993) .

12.44.040 Purchases.

A. Fees. The Missoula City Cemetery shall have available in the cemetery office a listing of all fees regarding the sales of interment or memorial locations, required liners or vaults, required services, and additional accessories or services available for purchase. A second interment fee must be assessed for a second interment to go into a grave. All fees must be fully paid in advance of use, delivery of good, or initiation of services.

B. Payment. The Missoula City Cemetery shall follow procedures of receipting and handling of funds as prescribed by the Missoula City Finance Department.

C. Pre-need. The Missoula City Cemetery may accept payment for future use items and services as provided in this chapter and as authorized by the Missoula City Finance Department.

D. Donations. The Missoula City Cemetery may donate grave(s) including all interment fees for infants only. (See Section 12.44.200)

E. Re-Sale / Re-Purchase. Only the Missoula City Cemetery may re-purchase any unused grave, mausoleum, or cremation location that the original owner wishes to sell. Third party sales are prohibited. The Missoula City Cemetery shall repurchase the unused location for the original purchase price. No other re-sale or grave assignments are allowed unless specifically provided for in this chapter. For re-purchase, the Missoula City Cemetery shall require the following information be presented as evidence of ownership to the Missoula City Cemetery:

1. Original Ownership / Assignment Documents. The original document of ownership or title evidencing the ownership of the said location issued at the time of sale must accompany the written, notarized request for the following to use a Missoula City Cemetery grave:

a. Written grave assignment(s) which are required to be on file at the Missoula City Cemetery office.

b. Original “right to inter” document from the original purchaser of the grave(s) noting grave location.

c. Heirs must have legal grave assignment documents showing that heirs have a legal right to the “right to inter” in the grave(s).

2. Will / estate. Heirs must be identified recipients called out in a will or estate by legal documents in writing that state the grave assignment(s) to heirs including the following legal documentation:

a. Original “right to inter” document and/or a conveyance of assignment.

b. Grave location.

c. Legal document showing grave assignment(s) in the will or estate for heirs to use.

d. If there are no legal documents showing grave assignments, the grave(s) must remain unused indefinitely.

F. Reclamation. Ownership of grave site lots purchased but not used automatically revert to the Missoula City Cemetery 80 years after the later of:

1. The last interment date that is part of a group purchase of lots; or

2. The last grave assignment of ownership of a grave site for which the Missoula City Cemetery has been notified in writing of the assignment.

G. Veterans. Veterans and their spouses are allowed to purchase up to two graves at a reduced fee for use only by the veteran and/or spouse purchasing the grave for grave sites in the following areas:

1. Veterans Section. Veteran and spouse only allowed in this section. Veteran and spouse are required to have matching military flush markers. Upright monuments are prohibited.

2. Designated Open Section. Gravesites are allowed in any designated, plotted, and opened area of the Missoula City Cemetery. Monuments must follow the requirements in Section 12.44.170 of this Municipal Code.

(Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §4, 1994; Ord. 2866 §4, 1993).

12.44.050 Conveyance of Assignment.

A. Purchase. Upon payment in full for a grave, niche, mausoleum, memorial or cremation location, the Missoula City Cemetery shall prepare a conveyance of title (a deed or right to inter certificate) in the name specified by the purchaser. The name on the document of title signifies the legal owner of the grave, niche, mausoleum, memorial or cremation location. This document of title must be attested to and signed by the Mayor and the Missoula City Clerk for the City of Missoula. The owner shall receive the original, attested, and signed document of title within 30 days of purchase. It is the sole responsibility of the purchaser to file the document of title with the Missoula County Clerk and Recorder. The original document of title and written authorization from the legal owner is required for assignment, re-sale, (See Section 12.44.040 E), or conveyance of a grave, niche, mausoleum, memorial or cremation location. Without written authorization from the legal owner or designated representative with original right to interment documents, grave assignment documents, or interment by the legal owner, the location remains unused.

B. Ownership Conveyance Assignment Change.

1. Death of Legal Owner. Upon the death of the legal owner of a Missoula City Cemetery grave, niche, mausoleum, memorial or cremation location, if not used by the legal owner, may be assigned only as provided in this chapter or to any legal heirs at law.

2. Conveyance of Assignment. Any legal owner, personal representative, or authorized heir(s) of a Missoula City Cemetery grave, mausoleum, or cremation location may, in writing, assign the location to another person or persons for their use. The legal owner, personal representative, or authorized heir(s) must present a copy of the original conveyance of title and assignment to the Missoula City Cemetery. An assignment does not change the original conveyance of title. The following legal documentation is required to use a Missoula City Cemetery interment location:

a. Written assignment(s).

b. Original “right to inter” document from the original purchaser of the interment location noting the location.

c. Heirs must have documentation that demonstrates they were assigned the legal right to use the grave, mausoleum, or cremation location.

3. Will / estate: Heirs must be identified recipient(s) in a written legal document that provides for the interment location assignments. If there are no written legal documents that provide for assignment(s), the interment location may remain unused. Written legal documents acceptable to the Missoula City Cemetery include:

a. Written assignment(s);

b. Original “right to inter” document and/or a conveyance of assignment;

c. Interment location;

d. Legal documents such as a will, a legal trust, or an order from a court of competent jurisdiction; or

e. Any other documentation deemed legally acceptable to the Missoula City Cemetery.

4. Funeral Home Authorization. Alternatively, a request to use a specific grave, mausoleum, or cremation location made pursuant to written instructions from the funeral home personnel who direct a specific interment must be honored if the funeral home personnel indicate that permission from the heir(s) or legal owner of the location have authorized interment arrangements with the grave assignment documents and the funeral home personnel are satisfied the authorization is valid and documented.

(Ord. 3681, 2021; Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §5, 1994; Ord. 2866 §5, 1993).

12.44.060 Cemetery Funding. The Missoula City Council shall approve all Missoula City Cemetery fees by resolution after conducting a public hearing. The fees shall be available on the City's website and at the cemetery administration building.. All funds must be for the care, maintenance and improvement of the Missoula City Cemetery and cemetery property as required by this chapter and Montana Law.
(Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3440 §1, 2010; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §6, 1994; Ord. 2866 §6, 1993) .

12.44.070 Reserve Funds. It is in the best interest of the Missoula City Cemetery and the City of Missoula to initiate a long-range financial care plan for the Missoula City Cemetery. Therefore, the Missoula City Cemetery Board of Trustees, Missoula City Council, and Missoula City Administration have committed to the ongoing preservation of the Missoula City Cemetery by designating all revenues be placed into permanent funds designated for the long-term care of the Missoula City Cemetery unless otherwise determined by Missoula City Council.

A. Cemetery Fund Reserve.

All revenue generated from the sales and services of the Missoula City Cemetery, with the exception of any memorial donations, requests, and grants, shall be deposited into the Missoula City Cemetery Fund Reserve to offset the cost of operating and maintaining the Cemetery.

The Cemetery Fund Reserve is intended to be used for the care, maintenance, equipment, and improvement of the Cemetery facilities and property, as required by this chapter and Montana law. **B. Memorial Fund Reserve.** All donations, bequests, and grants designated as memorials must be deposited to the Missoula City Cemetery Memorial Fund Reserve. The Missoula City Cemetery Board of Trustees shall approve all non-designated expenditures from this fund.

(Ord. 3681, 2021; Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3482, 2012; Ord. 3440 §2, 2010; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §7, 1994; Ord. 2866 §7, 1993).

12.44.080 Repealed. (Ord. 3532, 2014; Ord. 3179, 2001; Ord. 2910 §8, 1994; Ord. 2866 §8, 1993.) (Codifier's note: in 2014, 12.44.080 was repealed and recodified as Chapter 12.44. Part 060)

12.44.090 Repealed. (Ord. 3532, 2014; Ord. 3179, 2001; Ord. 2910 §9, 1994; Ord. 2866 §9, 1993.) (Codifier's note: in 2014, 12.44.090 was repealed and recodified as Chapter 12.44. Part 060)

12.44.100 Repealed. (Ord. 3594, 2017; Ord. 2910 §10, 1994; Ord. 2866 §10, 1993).

12.44.110 Grounds Regulations. The following rules and regulations are established for the government of the grounds of the Missoula City Cemetery.

A. The Missoula City Cemetery has the responsibility for the general care, maintenance, and improvement of the cemetery grounds as specified in the City Cemetery Operations Manual.

B. All Missoula City Cemetery graves, veterans grave(s), niches, mausoleum, memorial, cremation locations, or other named Missoula City Cemetery sections are held as interment places for the human dead and for other purposes or acts intrinsic to the operation of a cemetery or as approved by Missoula City Council. Strict observance of the decorum which should characterize such a place is required. Reserved land may be used for other short term uses by the

permission of the Missoula City Cemetery Board of Trustees for as long as the Missoula City Cemetery Board of Trustees authorizes. The Missoula City Cemetery Superintendent or designated representative is authorized to refuse admission onto the grounds of any person and to expel those who may violate any provision of this Municipal Code or the cemetery ground rules established by the Missoula City Cemetery Board of Trustees.

C. General.

1. All vehicles operated within the Missoula City Cemetery grounds must not be driven at a speed exceeding 15 miles per hour.

2. Persons accompanied by dogs shall obey the leash laws as outlined in Missoula Municipal Code, Title 6, Chapter 6.07.

3. No alcoholic beverages or illegal drugs of any kind are allowed within the Missoula City Cemetery grounds.

4. Persons with firearms, whether unconcealed or concealed, are not allowed to bring firearms onto Missoula City Cemetery public property or to attend any assembly of people gathered at the Missoula City Cemetery. Law enforcement public safety officials and military honor guards are exempt from this provision.

5. All persons are prohibited from touching any object not their own. Plucking any flowers, shrubs, plants, wild or cultivated, or causing damage to any part of the Missoula City Cemetery grounds is prohibited.

6. The Missoula City Cemetery Superintendent or designated representative shall reserve the right to enter in or upon any Missoula City Cemetery grave, veterans grave, niche, mausoleum, memorial or cremation location or other named Missoula City Cemetery sections and make such improvements as deemed necessary for the continual care and maintenance of the cemetery grounds.

7. Legal owners of locations shall not change the grade of graves, niches, mausoleums, and memorial or cremation locations nor interfere in any way with the general plan of improvement directed by the Missoula City Cemetery.

(Ord. 3710, 2023; Ord. 3681, 2021; Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §11, 1994; Ord. 2866 §11, 1993).

12.44.120 Interment Arrangements.

A. Information.

1. The Missoula City Cemetery is not responsible for any mistake or error in any communication transmission, wireless, or reception of messages by telephone, email or fax received from funeral homes, families, or other businesses.

2. Interment requirements. The Missoula City Cemetery requires the following legal documents to be completed before any interment can be arranged and interment time scheduled:

a. All related interment fees are required to be paid in full before any interment service is scheduled according to this Municipal Code.

b. Written assignment(s).

c. Original “right to inter” document from the original purchaser of the interment location noting the location.

d. Heirs must have documentation that demonstrates they have been assigned the legal right to use the grave, mausoleum, or cremation location.

e. Any other documentation deemed legally acceptable to the Missoula City Cemetery.

3. Will / estate. Heirs must be identified recipient(s) in a written legal document that provides for the interment location assignment(s.) If there are no written legal documents that provide for assignment(s), the interment location must remain unused indefinitely. Written legal documents acceptable to the Missoula City Cemetery include:

a. Written assignment(s) which are required to be on file at the Missoula City Cemetery office.

b. Original "right to inter" document and/or a conveyance of assignment.

c. Interment location.

d. Legal documents such as a will, a legal trust, or an order from a court of competent jurisdiction.

4. All required decedent information, legal right to inter documents, and directions relative to interment services must be on record in the Missoula City Cemetery office prior to the Missoula City Cemetery preparing an interment. (See Section 12.44.030).

B. Arrangements. The Missoula City Cemetery must have the following advance notification to prepare grounds for interments. This notification time may vary dependent on grave location, ground conditions, and weather. It is the responsibility of the funeral director or other designated representative in charge of interment arrangements to contact and verify the correct time for the interment. These notification hours are adhered to year round, however, the Missoula City Cemetery Superintendent or designated representative has the authority to make adjustments to better serve the public while abiding by this chapter.

1. Summer. An interment requires eight to 16 regular cemetery working hours advance notice for preparation from the time the Missoula City Cemetery receives the following information:

a. Grave location.

b. Interment type (Casket or Cremation).

c. Date and time requested for interment.

2. Winter. An interment requires 16 to 24 regular cemetery working hours advance notice for preparation from the time the Missoula City Cemetery receives the following information:

a. Grave location.

b. Interment type (Casket or Cremation).

c. Date and time requested for interment.

Example: During winter months, the above information must be received by the Missoula City Cemetery office by Wednesday for a Saturday or Monday interment.

3. Holidays and weekends are non-working hours and cannot be included in the above notification timelines.

C. Sundays and Holidays. No interments are permitted on any Sunday or on any legal holiday. Exceptions may be made only with regards to religious beliefs.

D. Storage. The Missoula City Cemetery shall at no time store an unburied casket on the Missoula City Cemetery premises. If a service must be conducted prior to grave preparation, the funeral director shall return the casket to the funeral home storage until the grave preparation is completed. When grave preparation is completed, the funeral director shall return the casket to the Missoula City Cemetery to complete the interment. Any costs associated with this transportation and storage are the responsibility of the funeral home or the family.

E. Ground Conditions. Upon notification from the funeral director or family representative, the Missoula City Cemetery shall assess the ground conditions for the requested grave location and the requested date and time for the interment. The Missoula City Cemetery shall then ensure ground preparation or alert the funeral director to any issues regarding

the grave that may prevent the grave preparation by the requested date and time. Issues that could affect the ground preparation may include but are not limited to: tree locations, over-sized monuments, soil conditions, and any unforeseen ground conditions.

F. Times. The Missoula City Cemetery schedules interment services between the hours of 8:30 a.m. to 3:30 p.m. with all services concluded by 4 p.m. The hour for the interment services must be so arranged that the grave or niche may be properly closed and all surplus ground removed before 4:30 p.m. An overtime fee is charged for all interments completed outside these regular hours. The overtime rate charged is set forth in the Missoula City Cemetery fee listing approved by Missoula City Council. The funeral home in charge of interment or person making arrangements must be charged an overtime fee as follows:

1. Weekdays. An overtime fee must be charged when the Missoula City Cemetery is required to complete the closing duties of the grave or niche after 4:30 p.m. This fee is equal to the OT Weekdays after 4:30 p.m. opening and closing fee as set forth in the fee listing approved by Missoula City Council.

2. Saturdays.

a. **Morning.** When the Missoula City Cemetery is able to complete the closing of the grave or niche prior to 12 p.m. on Saturday, the OT Weekend AM overtime fee must be charged as set forth in the fee listing approved by Missoula City Council.

b. **Afternoon.** When the Missoula City Cemetery is required to complete the closing of the grave or niche after 12 p.m. on Saturday, the OT Weekend PM overtime fee must be charged as set forth in the fee listing approved by Missoula City Council. All interment services must be completed by 3:30 p.m. on Saturday.

G. Fees. All fees associated with an interment must be paid to the Missoula City Cemetery office in advance of grave preparation or, with authorization from the Missoula City Cemetery office, fees may be paid on the day of service.

H. Placement

1. All interments, disinterments, and re-interments must only be performed by Missoula City Cemetery.

2. Double casket interments are not allowed.

3. Two decedents may be placed in the same grave under the following conditions:

a. A parent and infant child together in one casket or vault.

b. Two persons, with the required grave assignment documents, when one body has been cremated. (Example: One casket and one cremation OR two cremations may be placed in one location.)

c. The Missoula City Cemetery reserves the right to limit, alter, designate sections for, or eliminate multiple interments in the same location.

4. Opening and closing, liner, vault, and possible interment, disinterment and re-interment fees are required for each individual interment, disinterment, and re-interment. In the event a disinterment will be immediately followed with an interment, only the disinterment fee will be charged for reinterment. All fees will still apply for the second interment. For graves: A casket must be placed first and deepest in a grave. If a cremation is interred first, the cremation must be disinterred then re- interred after the casket has been interred. All fees associated with disinterment, interment, and re-interment of both individuals will apply.

5. All cremations must be placed in a polyvault and buried not less than 2' deep in a grave or placed in an urn and interred into a niche, or cremation location unless otherwise required. Polyvaults must be purchased from the Missoula City Cemetery at fees set forth in the fee listing approved by the Missoula City Council.

6. All caskets must be placed in a liner and buried not less than 5' deep in a grave. Liners must be purchased from the Missoula City Cemetery at fees set forth in the fee listing approved by the Missoula City Council.

7. Caskets encased in a vault must not require an additional cement liner but must be assessed an access fee to the gravesite. Any organization that presents a vault for interment must be fully responsible for any damage to turf, monuments, foundations, irrigations, and vegetation as outlined in Section 12.44.190.

I. Viewing. It is not permissible for anyone to open a casket at the gravesite except the funeral director in charge of the interment arrangements.

J. Design. To more efficiently utilize Missoula City Cemetery areas and to implement beautification of cemetery grounds, the Missoula City Cemetery shall designate various areas or sections for specific types of interments, monuments, or other restrictions as deemed a benefit to the Missoula City Cemetery and public needs.
(Ord. 3681, 2021; Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §12, 1994; Ord. 2866 §12, 1993).

12.44.130 Fees. Fees for the Missoula City Cemetery must be approved by the Missoula City Council. Fee information must be available at the Missoula City Cemetery office. (Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §13, 1994; Ord. 2866 §13, 1993).

12.44.140 Niches.

A. Name Plate or Inscription. A nameplate or inscription is required for the purpose of identification of the location. Walls vary in requirements as follows:

1. Bronze Walls. A standard nameplate is required, purchased, and installed by Missoula City Cemetery.

2. Granite Walls. An inscription is required to be inscribed directly onto the granite wall face. The Missoula City Cemetery requires a specific format for unification of inscriptions that must be followed according to the purchaser's name designation:

Niche with Same Last Name

SMITH

JOHN
1927 – 1999

KATE
1930 – 2001

Niche with Different Last Names

SARAH
JONES
1955 – 1989

MARK
WILLIAMS
1936 – 1998

3. Standard format is used for all niche wall inscriptions. When a suffix is needed (Jr., Sr., IV, etc.) it must be placed after the first name. If the first name does not allow room on the niche, the suffix would be omitted. Niche inscriptions are permanent. Therefore, niches with inscriptions must not be repurchased or reassigned.

4. Upon a disinterment from a niche, the original inscription must forever remain as a memorial.

(Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §14, 1994; Ord. 2866 §14, 1993).

12.44.150 Use of bud vases on niche wall(s). Bud vases for all the niche wall(s) are not allowed. Flowers and decorations are allowed in vases as follows:

A. Open Sections. Permanently affixed onto hearths only.

B. Veterans Sections. Installed in foundations only.

C. Closed Sections. All new vases must be installed onto a hearth. Existing vases in foundations are acceptable but alterations require the vases to comply with Missoula City Cemetery current standards.

D. Bronze or Granite Walls. Vases or items taped, glued, or stuck to the niches or walls are not allowed.

E. The Missoula City Cemetery is not responsible for any vandalized, damaged, or stolen flowers or plantings.
(Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3179, 2001; Ord. 2910 §15, 1994; Ord. 2866 §15, 1993).

12.44.160 Repealed. (Ord. 3532, 2014; Ord. 3179, 2001; Ord. 2910 §16, 1994; Ord. 2866 §16, 1993). (Codifier's note: in 2014, 12.44.160 was repealed and recodified as Chapter 12.44. Part 060)

12.44.170 Monument Placement. The Missoula City Cemetery does not assume any responsibility or liability for monuments placed by anyone other than the Missoula City Cemetery on the Missoula City Cemetery grounds. The Missoula City Cemetery does not assume any responsibility or liability for damage to monuments after they are placed on the Missoula City Cemetery grounds that is not caused by Missoula City Cemetery staff negligence. The Missoula City Cemetery does not assume any responsibility or liability for damage to monuments due to weathering, weather events, acts of god, general aging or deterioration over time, or for vandalism. Monuments are the property of the legal owner or legal heir(s) of each interment location.

A. Marker. At time of interment, one temporary grave marker must be placed onto the grave for identification purposes. This temporary marker must not be replaced by Missoula City Cemetery and the grave must be unmarked. This temporary marker consists of the decedent's name, year of birth, and year of death. This temporary marker is not to be sold or given away but is designed for continued re-use and is the property of the Missoula City Cemetery.

B. Pre-Verification. Monument requests require a pre-verification process. Grave location is verified for stones, trees, or shrubs that might hinder placement of a new monument or replacement of an existing monument. Decedent information is verified with Missoula City Cemetery records, grave ownership, and interment assignments.

C. Variances. All variance requests must be submitted to the Missoula City Cemetery for approval. Variances must be in writing and include a drawing that shows the design of the monument, the monument layout on the foundation, and include all measurements for the monument and foundation.

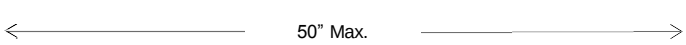
D. Permit. All monuments require completion of a monument permit, payment of all fees, and must meet requirements listed in this chapter and Cemetery Board of Trustees policies prior to the initiation of any work. Permit information must match pre-verification information and Missoula City Cemetery records.

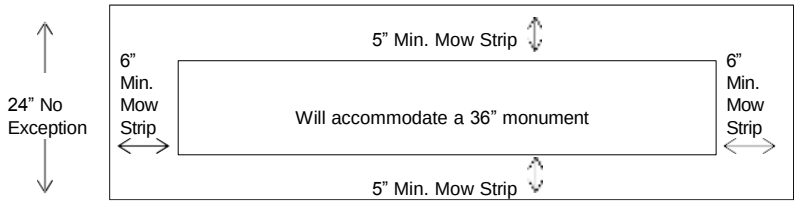
E. Installation. Missoula City Cemetery shall provide all concrete foundations which are included in the fee schedule as set forth in the Missoula City Cemetery fee listing approved by Missoula City Council. Foundations and monuments must be installed by Missoula City Cemetery staff. It is the responsibility of the company providing the monument to meet all Missoula City Cemetery guidelines and restrictions as detailed in this municipal code. Monuments that do not meet Missoula City Cemetery regulations or do not match pre-verification and permit information must not be installed.

F. Sketch. Missoula City Cemetery maintains standard guidelines for the size and placement of monuments upon graves. A required sketch must show the design of the monument, the monument layout on the foundation, and include all measurements for the monument and foundation. Any irregular monuments must have a sketch presented and approved by the Missoula City Cemetery Superintendent or designated representative and may be reviewed by the Missoula City Cemetery Board of Trustees prior to any installation.

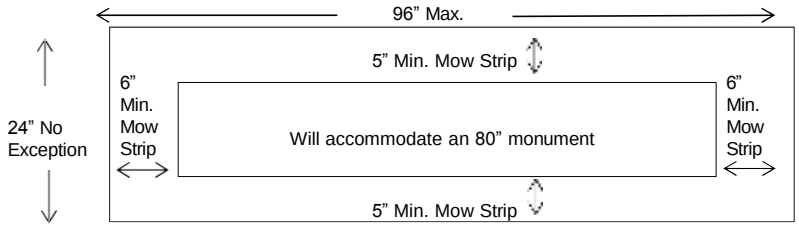
G. Benches. A bench may be used as a grave monument, however, park benches are not allowed. All bench requests must comply with monument guidelines and require pre-approval by the Missoula City Cemetery. A drawing is required that shows the bench design, the bench layout on the foundation, and must include all measurements for the bench and foundation.

24" by 50" foundation accommodates a 36" monument on a grave





24” by 96” foundation accommodates an 80” monument on a double grave



H. Restrictions. Missoula City Cemetery and the Missoula City Cemetery Board of Trustees at their sole discretion shall have authorization to review, approve, or reject any monuments placed or presented for placement on the Missoula City Cemetery grounds that do not meet the integrity of the Missoula City Cemetery.

1. All monuments are required to have a foundation with a measured allowance of 6” and 5” from the furthest protrusion as shown in the detailed drawing. Foundation size may not exceed 50” in length on a single grave or 96” in length on a double grave. Foundations are required to measure 24” in width. (See diagrams for dimension examples.)

2. Monuments, other than flush, must be no less than 6” or exceed 36” in height as measured from foundation to top of monument. However, the Missoula City Cemetery Superintendent or designated representative and the Missoula City Cemetery Board of Trustees shall have authorization to review all monument design, composition, and size in accordance with the grave location to determine acceptability.

3. Any monument, effigy, inscription or structure determined to be offensive, improper, or injurious to the surrounding grounds must be corrected or removed.

4. Full and half size graves must accommodate a 36” upright monument for two people.

5. Sections of the Missoula City Cemetery grounds may be designated and reserved by the Missoula City Cemetery for the designation of specific types of monuments.

6. Monuments must be placed centered on the grave(s). The monument must be located on the grave of the decedent as named on the monument with the exception of memorials.

7. Memorial monuments are allowed on the grave(s); however,

a. A memorial monument or inscription must include the words ‘In Memory Of’.

b. A memorial inscribed on a monument may be placed on the front or back of the monument. If placed on the front of a monument, the memorial inscription must clearly state who the interred is and who the memorial is for. All inscriptions must be approved by the Missoula City Cemetery Board of Trustees, Missoula City Cemetery Superintendent or a designated representative. All administrative fees will apply.

c. All memorials must be registered with the Missoula City Cemetery office.

8. Up to two monuments are permitted on a grave location. One monument must be placed in the 2' headspace of the grave and centered upon the grave(s). A second monument is allowed as follows:

a. When two interments are in the same grave, a second monument may be permitted to be placed directly in front of the first monument. The second monument must be flush with the ground and centered on the grave(s) or directly aligned with the original monument.

b. When using infant pillow marker monuments, two markers may be placed in the same foundation providing the border restrictions are met. (See diagrams for dimension examples.)

c. Military plaques must be installed flush with the ground, in a foundation, and centered upon the grave or military plaques may be affixed to the back of an upright monument on the grave.

d. Large family lot monuments require additional grave purchases for the sole purpose of placement for the over-sized monument. The monument must be centered on the grave(s). Designated section restrictions must apply dependent on the size of the monument.

9. All monuments are required to be sealed with a monument setting compound. This includes a monument directly onto a foundation or a monument to a hearth to a foundation. Additional requirements may be incorporated through the internal policies of the Missoula City Cemetery.

10. All inscriptions are required to be documented on an inscription permit stating name(s), date(s), and grave location(s) and must be registered with the Missoula City Cemetery.

11. Only granite monuments/rocks or military bronze plaques are allowed in Missoula City Cemetery.

12. Foundations must be cement or granite. No aggregate or dye foundations allowed.

I. Vases. Vase restrictions are enforced according to the restrictions listed in Section 12.44.150. Vases must be installed by a company with a Missoula City Business License, worker's compensation insurance, and general liability insurance on file with Missoula City Development Services. (See Section 12.44.190) Vases are allowed as follows:

1. Open Sections. Permanently affixed onto hearths only.

2. Veterans Sections. Installed in foundations only.

3. Closed Sections. All new vases must be installed on a hearth. Existing vases in foundations are acceptable but alterations require the vases to comply with current standards.

J. No dig in monuments are allowed without a foundation. All monuments placed on a foundation must follow the restrictions above. The standard military issue for the Veteran's section is pre-mounted bronze plaques on a granite base foundation.

K. Veteran's Section. Only flush monuments allowed. Spouse's monument must match the Veteran's monument. Bronze plaques pre-mounted on a granite base foundation are allowed.

(Ord. 3681, 2021; Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §17, 1994; Ord. 2866 §17, 1993).

12.44.180 Missoula City Cemetery permit for approved work. A Missoula City Cemetery permit may be obtained for approved work and may be used to purchase Missoula City Cemetery labor and materials beyond the scope of normal, general maintenance practices of the Missoula City Cemetery. Any person requesting this service must state on the permit the location of proposed work, what is proposed to be done pursuant to the permit, the agreed fee to be paid to the Missoula City Cemetery and sign and date the permit.

(Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3179, 2001; Ord. 2910 §18, 1994; Ord. 2866 §18, 1993).

12.44.190 Liability. Any person or business conducting pre-authorized work on the Missoula City Cemetery grounds is required to have a current Missoula City business license, workers compensation insurance, and general liability insurance in good standing and on file with Missoula City Development Services. Such person or business is liable for any

damage to any Missoula City Cemetery gravesites, property, shrubs, irrigation, flowers and plantings, trees, monuments, and unnecessary damage to the lawn caused by them. All work must occur on weekdays between the hours of 8 a.m. to 4:30 p.m. All work must be under the close inspection of the Missoula City Cemetery Superintendent or designated representative and must be completed promptly. All equipment and unused materials must be removed as the work is completed (Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3179, 2001; Ord. 2910 §19, 1994; Ord. 2889, 1994; Ord. 2866 §19, 1993).

12.44.200 Infants.

A. Defined. Infants shall be defined as any child under the age of three years old or under 3' in length.

B. Donate. The Missoula City Cemetery may donate all Missoula City Cemetery fees associated with the interment of an infant. These donated fees may include:

1. Opening and Closing.

2. Polyvault for infant cremation or fetus interments.

C. Location. Infants may be interred in one of two sections: Infant Section (smaller 5' x 5' graves) or in any available regular size grave in the Missoula City Cemetery.

D. Interments. Only one interment allowed in donated graves except following these section restrictions:

1. Infant Section. One infant per donated grave, no exceptions.

2. Open Sections. Any full size grave available for sale may have two interments. When one interment is an infant, the following rules apply:

a. Two Infants. Upon review and approval of the Missoula City Cemetery Superintendent or designated representative, two infants are allowed in the same donated full-size grave with all fees stated above waived according to the Missoula City Cemetery fee schedule.

b. Infant and Adult. Due to the donation of an infant grave, if a family member wishes to be interred with the infant, written authorization from the parents on record at Missoula City Cemetery is required and the following fees apply:

i. Cost of grave at current Missoula City Cemetery fee schedule.

ii. If infant was a casket interment, a second individual is required to be a cremation interment then open, close, and polyvault fees apply.

iii. If infant was a cremation interment and a second individual is a casket interment then disinterment fees for the infant, opening, closing, and liner fees for the casket, and re-interment fees for the infant apply.

E. Times. Interments must occur during regular working hours or family forfeits Missoula City Cemetery donation and full fees and requirements must be assessed per this chapter and fee schedule.

(Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §20, 1994; Ord. 2866 §20, 1993) .

12.44.210 Repealed. (Ord. 3532, 2014; Ord. 3179, 2001; Ord. 2910 §21,1994; Ord. 2866 §21, 1993). (Codifier's note: in 2014, 12.44.210 was repealed and recodified as Chapter 12.44. Part 130)

12.44.220 Repealed. (Ord 3532, 2014; Ord. 3179, 2001; Ord. 2910 §22, 1994; Ord. 2866 §22, 1993). (Codifier's note: in 2014, 12.44.210 was repealed and recodified as Chapter 12.44. Part 130)

12.44.230 Disinterments.

A. Disinterments must be performed on weekdays at the convenience of the Missoula City Cemetery Superintendent or designated representative. It is the responsibility of the involved mortuary or funeral home to contact all persons that

could contest the disinterment prior to applying for a disinterment permit at the Missoula City-County Health Department.

B. State Law requires that a casket disinterment permit be presented to the Missoula City Cemetery prior to work commencing. In addition, the presence of the following is required:

1. Director of the Missoula City Cemetery or designated representative.

2. Funeral Director.

3. Any other person as required under the disinterment permit.

C. A cremation disinterment does not require a permit or witnesses. (Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §23, 1994; Ord. 2866 §23, 1993).

12.44.240 Mausoleum section established. Detailed building and site plans must be presented to the Missoula City Cemetery Board of Trustees for consideration. If it is deemed in the interest of the Missoula City Cemetery, a permit must be issued for construction after graves are purchased. The Missoula City Cemetery does not assume any responsibility of maintenance of the structures. Vaults used must be sealable airtight. Opening of the mausoleums must be done on a permit type basis. Mausoleums in other areas are prohibited.
(Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3179, 2001; Ord. 2910 §24, 1994; Ord. 2866 §24, 1993).

12.44.245 Sections. The Missoula City Cemetery Board of Trustees and Missoula City Cemetery Superintendent or designated representative are authorized to designate sections of the Missoula City Cemetery grounds for specific purposes. The Missoula City Cemetery has designated the following sections:

A. Old Section. This section consists of the oldest grounds in the Missoula City Cemetery and is permanently closed for all future sales. Upright or flush monuments allowed. Interments are allowed in the following circumstances:

1. Family grave reservation.

2. Cremation interred upon an existing grave.

B. Open Section. This section consists of all developed land ready for interments. Upright or flush monuments allowed.

C. Veteran Section. This section is restricted to a veteran and their spouse. Monuments flush with the ground are allowed. Veteran and spouse must have matching flush military monuments.

D. Niche Walls. This section allows cremation interments in granite or bronze walls. Niches for one or two interments are available. Inscriptions or name plaques are required on walls. (See Section 12.44.140)

E. Infant Section. Two infant sections are established. The original section in the oldest section of the Missoula City Cemetery is permanently closed to any interments. The second infant section in the older section of the cemetery remains open for use. Upright or flush monuments allowed. Only infants under the age of three years and under 3' in length allowed. One infant per grave allowed with no exceptions.

F. Trade, Labor, Fraternal, Religious Sections. Organizations can purchase sections available for sale in the Missoula City Cemetery and designate those graves for use of their members or affiliates. Upright or flush monuments are allowed according to section restrictions defined in this chapter. Organizations owning property must submit a notarized letter of grave(s) assignment(s) to the Missoula City Cemetery depicting the name and grave designated for an individual interment. All regulations regarding the Missoula City Cemetery apply to these sections.

G. Mausoleum Section. This section requires:

1. The owner must purchase a cemetery lot measuring 20' x 20'.

2. The maximum size for a mausoleum is 15' x 15'.

3. All mausoleums require a 5' border on all sides of the structure within the lot.

4. There are no height or level restrictions for the mausoleum.

5. Mausoleum designs must be presented to the Missoula City Cemetery Superintendent or designated representative and to the Missoula City Cemetery Board of Trustees for review, approval, or rejection.

6. Vaults used must be sealable airtight.

H. Family Cremation Section.

1. This section allows up to four cremations.

2. Two cremations must be placed to the east of the monument and two cremations must be placed to the west of the monument.

3. A solid foundation strip is installed by Missoula City Cemetery.

4. A standard monument is required to be placed on the foundation strip. The standard monument must:

a. Be a "Tablet" style monument with height of 32" as measured from foundation to top of monument.

b. Sit upon a hearth measuring up to 50" long with a maximum width no wider than 15".

c. Inscriptions must be placed on the front and back of the monument and match the grave assignments.

5. Vases installed on the hearth are the only flower option available.

I. Pet Memorial Wall & Ossuary

1. A Section separate from the other sections for human burial, that provides for a wall for inscription of pet names with an option of placing pet cremations into an underground ossuary.

J. Future Sections

1. The Missoula City Cemetery Board of Trustees and Missoula City Cemetery Superintendent or designated representative may authorize the addition of new sections as funding becomes available and public interest directs.

(Ord. 3681, 2021; Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292, 2005)

12.44.250 Repealed. (Ord. 3532, 2014; Ord. 3179, 2001; Ord. 2910 §25, 1994; Ord. 2910 §25, 1993). (Codifier's note: in 2014, 12.44.250 was repealed and recodified as Chapter 12.44. Part 240)

ARTICLE II. CEMETERY BOARD OF TRUSTEES

12.44.260 Composition

A. Creation. There is created and established a Missoula City Cemetery Board of Trustees. The Missoula City Cemetery Board of Trustees shall require the same qualifications as required by the laws of the state for the office of Mayor.

B. Composition. The Missoula City Cemetery Board of Trustees shall be composed of five persons, appointed by the Mayor, and approved by the Missoula City Council.

C. Term. The Missoula City Cemetery Board of Trustees shall serve a three-year term of office commencing on the first day of May of the year in which they are appointed.

D. Oath. Each duly appointed member of the Missoula City Cemetery Board of Trustees shall take and subscribe the oath provided by the laws of the state for city officials prior to the commencement of their duties. This oath must be filed in the office of the Missoula City Clerk.

E. Vacancy. Vacancies must be filled by appointment of the Mayor with the approval of the Missoula City Council.

F. Removal. The Missoula City Council may, at any time, by a vote of not less than two-thirds of all members of the council remove from office any member of the Missoula City Cemetery Board of Trustees.
(Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §26, 1994; Ord. 2866 §26, 1993).

12.44.270 Repealed. (Ord. 3532, 2014; Ord. 3179, 2001; Ord. 2910 §27, 1994; Ord. 2866 §27, 1993). (Codifier's note: in 2014 12.44.270 was repealed and recodified as Chapter 12.44 Part 236)

12.44.280 Organization. The Missoula City Cemetery Board of Trustees shall organize in July of each year by electing one of their members Chair and one Co-Chair. These officers shall hold office for one year and until their successors are elected and qualified. A majority of members of the Missoula City Cemetery Board of Trustees shall constitute a quorum for the transaction of business at any special or regularly called meeting.
(Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §28, 1994; Ord. 2866 §28, 1993).

12.44.290 Meetings.

A. Regular. The Missoula City Cemetery Board of Trustees shall hold regular meetings .on a date and time approved by the board. The date and time shall be reviewed and approved in January of each calendar year. The meetings shall be open for public attendance in-person in a City conference room and/or virtually via a digital platform approved by the Missoula City Council. The Missoula City Council shall adopt public meeting guidelines for the Missoula City Cemetery Board of Trustees meetings.

B. Special Meetings. Special meetings of the Missoula City Cemetery Board of Trustees may be called, from time to time, by the Chair or by three members of the Missoula City Cemetery Board of Trustees. Two days' notice must be given by the Chair to all members of the Missoula City Cemetery Board of Trustees. The notice must specify the subject of the special meeting and the meeting must be limited to that subject. The notice must also specify the time and place of the meeting.

C. Notice. All meetings of the Missoula City Cemetery Board of Trustees must be open to the public. Prior to the meeting each month, sufficient and reasonable notice of the time and place of the meeting, as well the agenda, will be published on the City's website.

D. **Meeting Attendance.** Each member of the Missoula City Cemetery Board of Trustees shall notify the chair and the public meeting admin in advance of inability to attend a board meeting. Absence from three consecutive regular meetings without notice to the Board Chair or absences from 50% of regularly scheduled meetings with or without notification during a fiscal year may be grounds for removal from board membership. The board shall discuss this member's absence and discuss what action to take. The chair may notify the Council and request they review the member's ability to serve as a productive and functional member of the board and to determine whether the individual should be removed from the board or the board position be declared vacant.

(Ord. 3710, 2023; Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §29, 1994; Ord. 2866 §29, 1993).

12.44.300 Conflict of interest. No member of the Missoula City Cemetery Board of Trustees of the Missoula City Cemetery shall be involved in a decision or contractual obligation, either directly or indirectly, during the course of public duties with the knowledge there is an opportunity to further the member's private interest. A Missoula City Cemetery Board of Trustees member violating this section may be prosecuted in accordance with Montana State law. Any contract entered into by the Missoula City Cemetery Board of Trustees in violation of this section are null and void. (Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §30, 1994; Ord. 2866 §30, 1993).

12.44.310 Powers and duties generally.

A. Control. The Missoula City Cemetery Board of Trustees, subject to the control of the Missoula City Council shall have the full charge, control, custody, management and supervision of:

1. The Missoula City Cemetery grounds and places of interment that are now or may be owned, held or controlled in any manner by the City of Missoula in the future.

2. All property, real, personal and mixed which is now or may be used, occupied or possessed in any manner in connection with any Missoula City Cemetery grounds or places of interment in the future.

3. All books, plats, records and other papers to any such property in any manner belonging, appertaining to, or used in connection with the Missoula City Cemetery.

4. The reserve funds established for Missoula City Cemetery care including the Capital Fund Reserve, Niche Fund Reserve, Memorial Fund Reserve, and all other funds as designated for Missoula City Cemetery purposes.

B. Authority. The Missoula City Cemetery Board of Trustees is authorized to make rules, policies, and regulations for the care, management, presentations and improvement of the Missoula City Cemetery and cemetery grounds, places of interment and property not included in this chapter as they deem necessary and proper and to enforce the same.

C. Rights. The Missoula City Cemetery Board of Trustees shall have the right to interview and participate in the selection process of a Missoula City Cemetery Superintendent as per the qualifications set by the Missoula City Cemetery Board of Trustees and Missoula City Administration in a job description for this position.

D. Staff. The Missoula City Cemetery and Missoula City Cemetery Board of Trustees shall have the right to review the work performance and conduct of the Cemetery Superintendent. (Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292; Ord. 3179, 2001; Ord. 2910 §31, 1994; Ord. 2866 §31, 1993).

12.44.320 Repealed. (Ord. 3532, 2014; Ord. 3179, 2001; Ord. 2910 §32, 1994; Ord. 2866 §32, 1993). (Codifier's note: in 2014, 12.44.320 was repealed and recodified as Chapter 12.44. Part 040)

12.44.330 Public Record. The books and papers of the Missoula City Cemetery Board of Trustees and all Missoula City Cemetery records are public record and open to the public. (Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §33, 1994: Ord. 2866 §33, 1993).

ARTICLE III. REPEALED

12.44.340 Repealed

(Ord. 3710, 2023; Ord. 3680, 2021; Ord. 3594, 2017; Ord. 3532, 2014; Ord. 3292, 2005; Ord. 3179, 2001; Ord. 2910 §34, 1994; Ord. 2866 §34, 1993).

Chapter 12.48

BOULEVARDS

Sections:

12.48.010 Defined.
12.48.020 Classification.
12.48.030 Duty of landowner.
12.48.040 Permitted uses.
12.48.050 Prohibited uses.
12.48.060 Standards for landscaping--Variance.
12.48.070 Regulations for landscaping.
12.48.080 Enforcement.

12.48.010 Defined. "Boulevard" means an area of public right-of-way between the edge of the public street, whether curbed or not, and the private property line. In the Montana Code Annotated, a boulevard is sometimes referred to as a "parking." (Ord. 2168 §1, 1980).

12.48.020 Classification. For purposes of this chapter, boulevards shall be classified as follows:

A. Developed boulevard: a boulevard landscaped primarily with grass, trees, shrubs and other vegetation, and intended to be kept as a park-like space;

I B. Undeveloped boulevard: an area of public right-of-way between the edge of an uncurbed public street and private property which is not landscaped with grass, trees or other vegetation, but contains dirt, gravel, or like material, or is paved;

C. Unmaintained boulevard: a boulevard which at one time was a developed boulevard, contains trees, or which abuts a curbed street but where some portion of the vegetation has died, has not been maintained or does not exist, and which contains dirt or other debris, but no portion of which has been paved;

D. Boulevard median: a landscaped area located in the middle of the public street. (Ord. 2168 §4(1), 1980).

12.48.030 Duty of landowner. It is the duty of the owner of any real property within the city to maintain or cause to be maintained any boulevard that adjoins the real property. Maintain shall mean the watering of trees, shrubs, plants, grass and vegetation within the boulevard, mowing the grass, eliminating the weeds, and complying with the provisions of city ordinances pertaining to the trimming, pruning, or removal of any trees, shrubs, plants or vegetation. Adjoins shall include those areas that are separated by only a sidewalk. It is illegal to degrade a boulevard. (Ord. 2168 §2, 1980).

12.48.040 Permitted uses.

~~A. Where the city engineer has approved, prior to the passage of the ordinance codified in this chapter, the use of a city boulevard for commercial and/or multi-family off-street parking and the boulevard has been paved, such use may continue unless deemed hazardous by the city engineer or determined not to be in the public interest by the city council.~~

~~B. Where the city boulevards, prior to the passage of the ordinance codified in this chapter, have been used for multi-family and commercial parking prior to the enactment of the off-street parking ordinance, such use may continue unless deemed hazardous by the city engineer or determined not to be in the public interest by the city council.~~

~~C.~~ When approving design plans for a zoning compliance permit, the city zoning officer may allow landscaping ~~requirements to be partially satisfied by landscaping within the boulevard. (Ord. 2168 §4(3), 1980).~~

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12.48.050 Prohibited uses.

A. There shall be no parking of motorized vehicles on developed boulevards, unmaintained boulevards or boulevard medians, unless otherwise provided in this chapter.

I B. There shall be no storage or parking of personal property of any type on developed boulevards, unmaintained boulevards, undeveloped boulevards or boulevard medians.

~~C.~~ There shall be no structures of any kind, except signs erected by governmental agencies and such other structures as allowed by regulation adopted pursuant to this chapter. (Ord. 2168 §4(2), 1980).

12.48.060 Standards for landscaping—Variance.

~~A. Boulevards abutting residential property shall contain grass, trees, shrubs, flowers or other ornamental plants. In addition, such boulevards may contain sidewalks, pathways, and other reasonable and customary improvements.~~

~~B. Boulevards abutting commercial or industrial property not located in residential areas may contain, in addition to those items set forth in subsection A above, crushed rock or gravel, wood chips, bark, and other materials customarily used in commercial landscaping, so long as proper provisions are made to ensure that such material does not spill into the street.~~

~~C. In case an abutting property owner, his agent or lessee is unable to comply with the above provisions because of extraordinary and peculiar set of circumstances constituting a hardship, or because of a wish to install a type of~~

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~~landscaping not specifically provided for above, but compatible with the surrounding area and in harmony with the public purposes of boulevards, such person may petition the design review board for a boulevard variance, which, if granted shall be specific as to the type of landscaping to be permitted and the reasons which justify granting the variance. (Ord. 2168 §3, 1980).~~

~~**12.48.070 Regulations for landscaping.** The city zoning officer is authorized to develop regulations to implement this chapter and to govern landscaping in the public right-of-way. Such regulations shall be approved by the city council and shall be utilized by the city zoning officer in approving landscaping site plans. (Ord. 3492, 2013; Ord. 2168 §5, 1980)~~

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12.48.080 Enforcement. This chapter shall be enforced by the Police department, Development Services, city Parks department. (Ord. 3492, 2013; Ord. 2168 §6, 1980).

Chapter 12.50

BANNER PLACEMENT

Sections:

12.50.010 Purpose.
12.50.020 Banner sign defined.
12.50.030 Application for permit.
12.50.040 Standards for zoning officer approval.
12.50.050 Maximum duration.
12.50.060 Zoning officer review.
12.50.070 Variance.

12.50.010 Purpose. The purposes of this chapter are to protect the health, safety and general welfare of the people residing and visiting the city and to protect property values, enhance the appearance of the city and promote the tourist industry by limiting the type, location and duration banners may be allowed to exist within the corporate limits of the city. (Ord. 2384 §1, 1984).

12.50.020 Banner sign defined. A "banner sign" means a sign composed of lightweight material erected for a limited duration to emphasize a particular nonprofit event, activity or celebration. Signs erected solely for the purpose of providing directions for special events shall not be considered banner signs and may be approved by Development Services staff. (Ord. 3492, 2013; Ord. 2384 §2, 1984).

12.50.030 Application for permit.
An application shall be made to the Development Services for the installation of any banner sign. The application shall include the following:

A. An initial application fee to help defray review costs shall be established and amended by City Council resolution after conducting a public hearing. Any subsequent review of the identical banner placed at the same location shall be exempt from the review fee;
B. The applicant's 501 nonprofit documentation form if the event, activity or celebration promotes a nonprofit organization;
C. The requested dates and location of banners; and
D. A scaled drawing of the proposed banners, including all copy.

(Ord. 3526, 2014; Ord. 3492, 2013; Ord. 2384 §3, 1984).

12.58.035 Special event permit – Fee

The fee for a special event permit shall be established and amended by City Council after conducting a public hearing. This fee applies to all events that conduct a special event within a public sidewalk, street, sidewalk or public right-of-way. The permit fee is waived for special events conducted under 12.58.030 (B) (13) and (14) and 12.58.090.
(Ord. 3526, 2014)

12.50.040 Standards for zoning officer approval. Banners shall be strictly limited to promoting nonprofit organizations as verified with 501 nonprofit documentation form or noncommercial activities. The banner shall not display any commercial message or commercial enterprise's name except one logo not exceeding one hundred forty-four square inches per side. (Ord. 2384 §4, 1984).

12.50.050 Maximum duration. Banner(s) may only be displayed for a maximum duration of two weeks during any calendar year for the promotion of any organization, event or celebration. (Ord. 2384 §5, 1984).

12.50.060 Zoning officer review. The zoning officer shall collect, record, review and approve or deny all applications in accordance with the standards provided in this chapter for safety considerations. (Ord. 3492, 2013; Ord. 2384 §6, 1984).

12.50.070 Variance. Any banner request not meeting the standards set forth in this chapter may only be approved by a two-thirds council vote after review by the plat, annexation and zoning committee. (Ord. 2384 §7, 1984).

Chapter 12.52

STREET NUMBERS

Sections:

12.52.010 Assignment.
12.52.020 Renumbering--Appeal--Failure to comply.
12.52.030 Numbering system.
12.52.040 Residential uses.
12.52.050 Commercial uses.
12.52.060 Numerals required--Size and reflective quality.

12.52.010 Assignment. For each lot or tract of land abutting any street or avenue in the city a street number shall be assigned by the city's Geographical Information Services (GIS) office. (Ord. 3492, 2013; Ord. 2116 §1, 1980).

12.52.020 Renumbering --Appeal--Failure to comply.

A. Whenever existing street numbers for structures:

(1) Are out of sequence;
(2) Indicate that the structure should be found on the other side of the street;
(3) Identify houses on corner lots as being on one intersecting street when by virtue of their access they should be on the other intersecting street;
(4) Need to be changed to bring numbers assigned by the county into conformity with numbers assigned by the city;
(5) Do not conform to the system and the modifications thereto used by the city's GIS office in assigning street numbers; or
(6) Do not comply with one or more of the other requirements of this chapter; the city's GIS office may order the owner or the affected property owner to change the number to one selected by the city's GIS office.

B. The order of the city's GIS office may be appealed by sending a written notice of appeal to the city council within thirty days of issuance of the order. The city council shall refer the appeal to an appropriate committee.

C. After hearing the appeal, the committee shall affirm, modify or rescind the city GIS office's order.

D. Upon expiration of the time for appeal or upon a decision of the appeal, the affected property owner shall change the house number as required by the city's GIS office or the city council. Failure to comply with the order shall constitute a misdemeanor. Each day shall constitute a separate offense.
(Ord. 3492, 2013; Ord. 2116 §2, 1980).

12.52.030 Numbering system. The city GIS office shall assign numbers in accordance with the following system: The south side of streets running east and west shall bear odd numbers, and the north side of such streets shall bear even numbers. The west side of streets running north and south shall bear odd numbers and the east side of such streets shall bear even numbers. The city GIS office shall follow this system as they deem it applicable. Where problems arise in the

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application of the above system, the city GIS office shall have discretion to assign numbers or select such a numbering system as best meets the needs of the particular case. (Ord. 3492, 2013; Ord. 2116 §3, 1980).

12.52.040 Residential uses.

A. Street numbers shall be placed on the exterior wall of all residential structures in such a position as to be clearly visible from the public highway or street to which the number relates.

B. Where multi-family structures have separate street numbers for each unit, such numbers shall be placed on the doors or within three feet of the doors on adjacent walls. If such numbers are not clearly visible from the nearest public highway or street, the numbers shall also be listed elsewhere on the premises on which the structure is located so as to be clearly visible from the public highway or street.

C. Street numbers for mobile homes shall be placed on exterior walls within three feet of the main entrances. If such numbers are not clearly visible from the public highway or street to which the number relates, the numbers shall also be listed elsewhere on the premises on which the structure is located so as to be clearly visible from such public highway or street. Where the city GIS office deems it necessary, he/she shall require the owners of mobile home parks to erect a map at the entrances thereto depicting the layout of streets and the location of lots to which street numbers are assigned.

D. Where multi-family structures have a primary street number to designate the structure and the secondary numbers or letters to designate individual units therein, the primary street number may be placed on the premises near the structure as well as on the exterior wall pursuant to subsection A of this section. Secondary numbers or letters designating individual units shall be placed on doors or on adjacent walls within three feet of the doors.
(Ord. 3492, 2013; Ord. 2116 §4, 1980) .

12.52.050 Commercial uses. Nonresidential and mixed residential/nonresidential structures shall have street numbers displayed on exterior walls or doors. Multiple nonresidential uses of buildings shall be given separate street numbers only when there is a separate entrance from the street to such use. (Ord. 2116 S5, 1980).

12.52.060 Numerals required--Size and reflective quality. Every street number placed on an exterior wall or other structure as required by this chapter shall be expressed in numerals. The numerals shall either have a reflective surface or shall contrast distinctly with the background on which they are placed so that they are readily visible at night from the street to which the number relates. Numerals used on nonresidential and mixed residential/ nonresidential structures shall be at least four inches high. (Ord. 2116 §6, 1980).

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Chapter 12.56

OPEN SPACE ACQUISITION

Sections:

12.56.010 Short title.
12.56.015 Terms and their Definitions as used in this Chapter.
12.56.020 Purposes.
12.56.030 General policies.
12.56.040 Types of acquisitions authorized.
12.56.045 Improvements to open space land
12.56.050 Conservation bond.
12.56.060 Repealed.
12.56.070 Citizens Advisory Committee on Open Space.
12.56.080 Committee's Review of Open Space Proposals.
12.56.090 Alternative and supplemental sources of funds.
12.56.100 Open space land conservation by other organizations.
12.56.110 Conversion or diversion of open space land.

12.56.010 Short title. This chapter may be cited as "The City of Missoula Open Space Ordinance." (Ord. 3653, 2019; Ord. 3220, 2002; Ord. 2958, 1995; Ord. 2183 §1, 1981).

12.56.015 Terms and their Definitions as used in this Chapter

Open Space – A broad term intended to track the definition found in 76-6-104(3), MCA, generally including parks, trail corridors, greenbelts or greenways, conservation lands, riparian areas, and agricultural lands that are provided or preserved for public benefit.
Open Space Plans – Any City Council adopted land use or issue plan that addresses the vision, goals, and strategies related to City Open Space. May include components of various management plans, active transportation plans, or other planning documents which promote, protect, administer, and provide for open space.
Conservation Bond Fund – A fund created to hold voter approved general obligation bond proceeds from (1) the City's portion of the 2006 Missoula County open space bond, a ten million dollar general obligation bond authorized by a vote of Missoula County voters on November 7, 2006, and (2) the City's portion of the 2018 Missoula County open space bond, a fifteen million dollar general obligation bond authorized by a vote of Missoula County residents on November 6, 2018.
Open Space Fund – A separate fund or funds created to hold the proceeds of donations, bequests, grants, and appropriated moneys that are specifically earmarked for City open space acquisition projects. (Ord. 3653, 2019)

12.56.020 Purposes. The purposes of this chapter are:

A. To implement, with respect to the City of Missoula, MCA 76-6-104(3) the Montana Open-Space Land and Voluntary Conservation Easement Act of 1969 and City Council adopted open space plans, including applicable land use and open space management plans.

B. To establish procedures for the conservation and enhancement of open space lands located within or near the City's borders; and

C. To establish procedures for the administration and use of the proceeds of open space bonds including, but not limited to: 1) the Missoula Conservation Bond, a five hundred thousand dollar general obligation bond issue authorized by a vote of the people November 4, 1980 (Ord. 2183 2, 1981), 2) A subsequent Missoula Conservation Bond, a five million dollar general obligation bond issue authorized by a vote of the people November 7, 1995, 3) the City's portion of the 2006 Missoula County open space bond, a ten million dollar general obligation bond authorized by a vote of Missoula County voters on November 7, 2006, the City's portion of the 2018 Missoula County open space bond, a fifteen million dollar general obligation bond authorized by a vote of Missoula County voters on November 6, 2018, and other such bonds which may be issued; and

D. To provide guidance for the expenditure of other funds, bequests, donations, or grants of money, property, service, or other transfers with conditions or restrictions related to open space conservation and enhancements. (Ord. 3653, 2019; Ord. 3220, 2002; Ord. 2958, 1995; Ord. 2183 §2, 1981).

12.56.030 General policies. It shall be the policy of the City:

A. To preserve significant open space land, including conservation land, parkland, trails, greenways, views and vistas, agricultural land, riparian land, and urban forest, which, because of its aesthetic, scenic, recreational, historic or ecological value, it is in the public interest to preserve;

B. To preserve conservation open space lands in such a manner and under such conditions as to ensure that they remain substantially undeveloped for a significant period of time, preferably in perpetuity;

C. To acquire and administer public parks, trails, and other appropriate open space lands in such a manner as to ensure their availability for public benefit;

D. To make a vigorous effort to preserve open space land under terms and conditions involving the least possible outlay of public funds;

E. To preserve our native forest, protect and enhance our planted forest, and encourage continued forestation of urban lands through acquisition, restoration, reforestation, and other means;

F. To preserve significant agricultural lands in their historic use and preserve agricultural soils;

G. In preserving open space land other than by gift, to utilize sources of funding other than the conservation bond fund and open space bonds to the maximum extent feasible, and thus to conserve the bond funds to the greatest extent practicable; and

H. In some cases, funds may be used for the purchase of lands with the intent to pursue limited development or to hold all or a portion of the land for prospective trade or sale from which the proceeds shall be used for acquisition or enhancement of open space real property, in accordance with the goals of open space plans. These lands are not to be subject to the provisions of Section 12.56.110 pertaining to the diversion or conversion of lands; and

I. In some cases, funds may be used to improve or enhance open space lands as enumerated in section 12.56.045 below. (Ord. 3653, 2019; Ord. 3220, 2002; Ord. 2958, 1995; Ord. 2183 §3, 1981).

12.56.040 Types of acquisitions authorized.

A. Acquisition of open space real property interests by the City or in partnership with the City may be by purchase (whether by bargain sale or otherwise), gift, bequest, donation, grant, lease, easement, conservation easement, trade, or a combination of the above; and

B. The type of open space real property interest acquired shall be sufficient to ensure its preservation as open space land in accordance with the City policies listed in 12.56.030 A through H except in the event that the conditions enumerated in Section 12.56.100 occur. (Ord. 3653, 2019; Ord. 3220; 2002; Ord. 2958, 1995; Ord. 2183 §4, 1981).

12.56.045 Improvements to open space land. Improvements shall meet the requirement of the Montana Open-Space Land and Voluntary Conservation Easement Act, MCA § 76-6-101, et seq., as amended, and/or the intent of the funding source.

A. In connection with real property acquired, conserved, or designated for the purposes of the Montana Open Space Land and Voluntary Conservation Easement Act, the City may provide or arrange for the provision, construction, maintenance, operation, or repair of any natural or public infrastructure that may be necessary for the provision, conservation, maintenance, and management of the property as open space land.

B. In compliance with applicable management plans, the City may expend open space bond funds to restore and make improvements to open space lands to ensure they continue to serve the public purposes for which they were protected. City Council shall review and approve proposals to restore or improve open space lands. (Ord. 3653, 2019)

12.56.050 Conservation bond.

A. Administration of Fund. The proceeds of the City's allocation of the 2006 open space bond and 2018 open space bond shall be placed in a special earmarked fund referred to as the conservation bond fund, dispersible only as provided hereinafter. The money in the conservation bond fund shall be invested so as to secure the maximum rate of return to the City, subject to the limitations and conditions set forth in Montana law and the Internal Revenue Code, and subject also to the possible need to have all or part of the fund available for immediate disbursement. Proposed investments of the fund shall be reviewed by the Finance Department with recommendations to City Council to insure that the time period of the investment is not inconsistent with anticipated needs for disbursement;

B. Disbursements.

1. Disbursements of funds out of the conservation bond fund shall be specifically authorized by the City Council.

2. The City Council may in no event authorize disbursements from the conservation bond fund until the review procedures specified in Section 12.56.080 have been fully complied with. Upon receipt of the recommendations

of the Citizens Advisory Committee on Open Space, the Council may, in its discretion, hold a public hearing on the open space proposal before taking action on the proposal.

C. Restricted Purpose of Disbursements. Disbursements from the conservation bond fund may be made only for the purpose of acquiring open space real property interests, trail development and matching other sources of funds for trail development, and improvements to open space land. Open space real property interests acquired through disbursements from the conservation bond fund may be held in either the name of the City or a qualified partner. Ancillary expenses of acquisition, trail development, or improvements to open space land, including but not limited to payment of attorneys' fees, appraisal fees, survey fees, and consultants' fees (whether direct charges to the City or reimbursements for expenses incurred by a landowner), may be drawn from the fund, so long as they are directly related to the acquisition, development or improvement of an open space real property interest in a particular parcel of land by the City or, with the approval of the City, by a qualified private organization or public agency. (Ord. 3653, 2019; Ord. 3220, 2002; Ord. 2958, 1995; Ord. 2183 §5, 1981)

12.56.060 Repealed. (Ord. 3653, 2019; Ord. 3220, 2002; Ord. 2958, 1995; Ord. 2183 §6, 1981).

12.56.070 Citizens Advisory Committee on Open Space.

A. There is established a committee, known as the Citizens Advisory Committee on Open Space, which shall consist of eleven citizens, at least six of whom are qualified electors residing in the City, and the remainder of whom are qualified electors residing either in the City, or in an area within the Missoula Planning Region. The City Council shall appoint seven members and the Mayor shall appoint three members, with the remaining seat held, or appointed, by the City Parks and Recreation Board. Each member of the Committee shall serve for a period of three years from date of appointment, with the initial terms being staggered to provide that the terms of four members of the Committee expire annually, except that every third year only three members' terms shall expire;

B. The Committee shall operate in accordance with bylaws approved by the City Council, which shall provide, among other things, that meetings of the Committee shall take place in accordance with the provisions of Montana law;

C. The City shall provide appropriate staff support for the Committee;

D. In appointing citizens to the Committee, the Council and Mayor shall require full disclosure by applicants of existing or potential conflicts of interest, and may consider the same in making appointments. Members of the Committee shall have a continuing obligation to fully to disclose existing or potential conflicts of interest to the Committee, which shall have the power to disqualify any one of its members for such a conflict. In no event may a Committee member who has an actual or apparent conflict of interest with respect to a particular open space proposal participate in any manner in the Committee's review of that proposal.

E. It shall be the duty of the Committee to:

1. Do everything in its power to implement city open space plans, particularly concerning the acquisition of, and capital expenditures for improvements to, parks, trails, or other open space lands using conservation bond funds; and

2. Provide the Council with written recommendations concerning the acquisition, improvement, and disposal of lands using funds from the conservation bond fund or open space fund pursuant to the guidance of applicable city open space plans as adopted by the City Council. (Ord. 3653, 2019; Ord. 3220, 2002; Ord. 3011, 1996; Ord. 2958, 1995; Ord. 2498 §1, 1986; Ord. 2183 §7, 1981)

12.56.080 Committee's review of open space proposals.

A. In its review of open space acquisition proposals the Committee may hear testimony, require and consider reports, make on-site visits, and hold work sessions with or without expert assistance, for the purpose of determining the desirability of any proposed acquisition, and of recommending on what terms such an acquisition should occur if found desirable. In making these determinations, the Committee shall consider, along with any other matters it deems relevant, the following matters:

1. The selection criteria included in applicable city open space plans;

2. Whether the conditions imposed upon or associated with the acquisition proposal, including the specific legal conditions to be set forth in any grant instrument and the guidelines proposed for managing the open space lands are adequate to accomplish and ensure conservation and are in the public interest;

3. Whether there are additional terms or conditions, or land management guidelines or policies, that should be incorporated in or set forth in relation to the proposal;

4. Whether the costs associated with the proposal are reasonably related to the land's value to the community as open space;

5. Whether the proposal will accomplish conservation at the least possible cost (for example, if a fee simple purchase is proposed, whether easements have been explored); and

6. Whether the extent of disbursements from the conservation fund necessary to carry through the proposal are reasonably related to the goals of applicable city open space plans, or whether the disbursements would give disproportionate emphasis to one parcel or type of land, to the detriment of the community's interest in preserving other parcels or types of land.

B. Upon concluding its deliberations with respect to an open space acquisition proposal pursuant to subsection A, or a conservation bond funded capital improvement proposal pursuant to subsection D, the Committee shall forward a written report to the Council expressing its findings and recommendations. Such a report may include minority recommendations, if any, and such appendices as the Committee may think desirable for the information of the Council.

C. In the case of the proposed acquisition of a conservation easement, the matter shall also be submitted to the appropriate Missoula County planning authority for review, in accordance with the Montana Open-Space Land and Voluntary Conservation Easement Act.

D. In the case of open space capital improvements using money from the conservation bond fund, the Committee may hear testimony, require and consider reports, make on-site visits, and hold work sessions with or without expert assistance, for the purpose of determining the desirability of a proposed improvement, and shall make a recommendation to City Council regarding the proposed improvement.

(Ord. 3653, 2019; Ord. .3220, 2002; Ord. 2958, 1995; Ord. 2183 §8, 1981).

12.56.090 Alternative and supplemental sources of funds.

A. In connection with the acquisition of a particular parcel of open space land, the City may, for the purpose of defraying all or part of the cost (including ancillary expenses), accept and expend donations (whether of money, property, or services) from private parties and organizations; grants from governmental, charitable or other entities; and moneys specifically appropriated by other governmental entities for this purpose. In addition, the City may, in its discretion, appropriate funds for this purpose in accordance with the provisions and limitations of the Montana Open-Space Land and Voluntary Conservation Easement Act;

B. In addition, the City may, for the purpose of furthering its general open space acquisition program and having additional funds available for use in future acquisitions, accept donations, bequests, grants, and appropriated moneys and accumulate and expend them as set forth in subsections C through E below;

C. In addition to the conservation bond fund described in Section 12.56.050, the City may create other earmarked open space funds for the purposes of open space acquisition, in which shall be deposited all of the funds mentioned in subsections A and B above;

D. Disbursements from an open space fund may be made only in the manner and for the purposes set forth in Section 12.56.040. Until disbursements are made, or in case part of the fund remains unexpended after disbursements, the moneys in the fund shall be invested in a reasonable and prudent manner so as to ensure the maximum rate of return on the money, and the interest so earned shall be deposited in and accumulated in the fund; and

E. If not in conflict with the specific terms of the grant or donation, the City may sell, trade, or otherwise reasonably dispose of any property donated to it for purposes of acquisition of open space (as distinguished from property donated as open space land) or acquired using money from an open space fund. The City shall deposit the proceeds in an open space fund. (Ord. 3653, 2019; Ord. 3220, 2002; Ord. 2958, 1995; Ord. 2183 §9, 1981).

12.56.100 Open space land conservation by other organizations.

A. No provision of this chapter is intended to or shall prevent any qualified private organization, as that term is defined in the Montana Open-Space Land and Voluntary Conservation Easement Act from acquiring or holding open space land located within or near the City; and

B. When it is in the public interest to do so, the City may acquire, hold and administer open space land cooperatively with other governmental entities or qualified private organizations, under such terms and conditions as will best fulfill the purposes and policies of this chapter.

C. When it is in the public interest to do so, the City may provide funds from the conservation bond fund for acquisition of open space real property interests by or in the name of a qualified private organization or other public agency. If funds are provided to or for the benefit of a qualified private organization or public agency for the acquisition of an open space real property interest, the City shall enter into an agreement with the qualified private organization or public agency sufficient to ensure that such acquisition is and remains consistent with the general policies expressed in Section 12.56.030. Such agreement may provide the City with a reversionary interest in the open space real property interests.
(Ord. 3653, 2019; Ord. 3220, 2002; Ord. 2958, 1995; Ord. 2183 §10, 1981).

12.56.110 Conversion or diversion of open space land.

A. No open space land acquired by the City using conservation bond funds described in section 12.56.050 shall be converted or diverted from open space use, including uses described in Section 12.56.030 (F), unless the provisions of the Montana Open-Space Land and Voluntary Conservation Easement Act have been fully complied with. In addition, no open space land acquired by the City, except land identified in Section 12.56.030 (H), may be converted or diverted from open space use unless:

1. The City Council has, after public hearing, made the findings called for in subsection B of this section and passed a resolution calling for a referendum on the matter of such conversion or diversion at a general or special City election; or

2. A petition calling for such a referendum, signed by fifteen percent of the registered voters in the City, has been submitted to the City in a regular manner; and in either case,

3. At the election called pursuant to subsection (1) or (2) above, more than fifty percent of those voting upon the referendum vote in favor of conversion or diversion.

B. The City Council may not consider a resolution for a referendum on the conversion or diversion of any parcel of open space land until it has found, on the basis of the public hearing, either that:

1. Due to changed circumstances, the land has lost its value as open space land significant to the community; or

2. That there exists an overriding public interest in conversion or diversion of the land.

C. Any moneys or other valuable consideration received by the City in connection with any conversion or diversion of open space land are required to be deposited in the earmarked fund established by Section 12.56.090 (C); and

D. The referendum procedures established by subsection A of this section are special referendum procedures relating specifically to conversion or diversion of open space land, and in no way imply that the acquisition of open space

land or other property by the City is a legislative act. (Ord. 3653, 2019; Ord. 3220, 2002; Ord. 2958, 1995; Ord. 2183 §11, 1981) .

Chapter 12.58

SPECIAL EVENTS PERMITS

Sections:

12.58.010 Purpose.
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12.58.030 Special event permit requirement.
12.58.035 Special event permit – Fee
12.58.040 Duties of the permittee/sponsor.
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12.58.070 Violation--Penalty.
12.58.080 Hold harmless and indemnification.
12.58.090 Temporary street or alley closures for residential block parties.
12.58.100 Exceptions.

12.58.010 Purpose.

A. The city is interested in and encourages support of community sponsored events. The city recognizes the many social, cultural and financial benefits that are the result of including special events in the life of the community. Such benefits include general quality of life, economic growth, tourism, recreation, recognition of fine arts, charitable aid and many others that are both tangible and intangible. The city is aware of the need to blend the community events with other citizen activities in the community.

B. Notwithstanding the recognized importance of special events, it is incumbent upon the city to establish ordinances, policies and procedures which will allow for the advance planning and management of city personnel and financial resources as well as the public sidewalks, streets and rights of way under its control. The city urges the private sector to increase its role in community activities so that impacts on operating budgets and staffing of city departments can be minimized or eliminated. Further, the city urges that any organization, entity or applicant ~~for~~ requesting permission to use public sidewalks, streets and rights of way under the city's control also consider scheduling their event at a location other than a sidewalk, street or public right of way and submit their application to the city at least two weeks in advance whenever possible in order to facilitate the ability of city employees to, in advance, adequately plan, organize and assist in preparation for the event scheduled to be conducted.

C. The city encourages and supports community events while working with event sponsors. This chapter establishes procedures for submission and processing of requests, conduct and requirements for special events proposed to be conducted on/in or having a direct effect upon public sidewalks, streets and rights of way under the city's control or traffic flow within the city.

(Ord. 3464, 2011; Ord. 3135, 2000; Ord. 2648 (part), 1989).

12.58.020 Definitions. As used in this chapter:

A. "Demonstration" means any public gathering of twenty-five or more persons for the purpose of a public display of grievances or in the support of any legal purpose.

B. "Parade" means any organized group, marching or in procession, whether on foot, animal or vehicle or some combination thereof which does not comply with normal and usual traffic regulations and controls.

C. “Parade Route” means the city approved route of travel of any permitted parade or fun run including the assembly, staging and disbanding areas.

D. “Special event" means any parade, demonstration, block party, march, fun run, walk-a-thon, athletic event, bicycle race or any such gathering of people in which the activity takes place on, in, or through any public sidewalk, street or right-of-way.

E. "Political speech’ is the public expression of views in support of or opposition to public figures or political candidates or any laws, regulations, actions, or policies of any branch of local, state, federal, or global governmental institution and its executory and enforcement agencies.

F. "Religious speech” is the public espousal of or support for a particular religious or spiritual view or support or opposition to actions or policies of established religious institutions.

(Ord. 3464, 2011; Ord. 3242, 2003; Ord. 3135, 2000; Ord. 2648 (part), 1989).

12.58.030 Special event permit requirement.

A. A special event permit shall be issued by the police department with respect to public right-of-way or by the parks and recreation department for park usage in order to conduct a special event within a public sidewalk, street, sidewalk or public right-of-way, whenever in the opinion of the city police department, city public safety regulation or control of motor vehicle or pedestrian traffic or public safety police protection is required for conducting the special event. It is unlawful to conduct a special event regulated by this chapter without a permit. A special event permit for use of a public sidewalk, street, sidewalk or public right-of-way shall be obtained from the city police department. The entity or person organizing, sponsoring or conducting the special event shall be responsible for obtaining any required liability insurance policy coverage as well as for applying for a special event permit. It is recommended the entity or person organizing or sponsoring the special event start the permit process at least two weeks in advance when time permits. If the submittal is received by city officials at least two weeks in advance of the event, the application may be circulated through intra-city departmental mail. However, if it is received less than two weeks prior to the event the applicant shall be responsible for going individually to the fire, Development Services , parking commission, and park departments to obtain any necessary approval. Completing those approvals, the applicant must return the application to the police department for police review. The request is then forwarded to the Mayor for final consideration.

B. The issuance of a special event permit shall be governed by the following standards:

1. The applicant or sponsors of the special event shall provide liability insurance providing coverage for their organization and naming the city as an additional insured. To the extent reasonably possible, liability insurance coverage shall be in the minimum amounts of $750,000 per claimant and $1,500,000 per occurrence. Any liability insurance requirements for residential block parties shall be governed by section 12.58.090, MMC, pertaining to residential block parties.

2. The applicant for any special event must have a traffic control plan which has been reviewed and approved by Development Services staff and if barricades or traffic control devices are deemed necessary the applicant shall be solely responsible for renting, placing and removing any required barricades or traffic control devices.

3. No permit shall be necessary for sidewalk picketing or marching being conducted solely on public sidewalks when the picketing is conducted in such a manner that allows pedestrian traffic an opportunity to pass by unobstructed and that allows pedestrian and/or motor vehicle traffic an unobstructed opportunity for ingress and egress to property.

4. No special event shall be conducted on a public street, sidewalk or right-of-way between the hours of nine p.m. and eight a.m.

5. No special event permit shall be issued to conduct a special event anywhere on Brooks Street from the intersection of Brooks and Bancroft southwest on Brooks to the city limits, for the reasons that this area is an area with a great amount of motor vehicle traffic congestion with higher speed limits and greatly restricted alternative motor vehicle traffic routes as a result of large areas of land not having streets pass through them as a result of the Bitterroot railroad tracks, several large shopping center complexes, the Sentinel High School and Missoula Vocational Technical campuses, the County Fairgrounds and Play Fair Park and little league baseball field complex. A special event permit may be issued for motor vehicle convoys or parades using Reserve Street when passing through the Missoula community from a beginning point outside of the city.

6. The police chief or his designee shall be empowered to reasonably designate the route of a parade or event to be consistent with one of the recommended routes approved by the Police Department and Development Services. If the applicant is unwilling to modify the application to incorporate this change, the application shall be denied.

7. The police chief or his designee may limit use of a street for a special event to one side or portion of a street whenever necessary in the public interest in order to provide and preserve public safety and traffic control in order to permit simultaneous use of streets by those participating in the special event and other motor vehicle traffic.

8. If the proposed special event is for the primary purpose of commercial advertising and it would disrupt streets or public places ordinarily subject to great congestion during the time of the special event, or would require such a diversion of police protection that it would deny reasonable police protection to the city, the application may be denied, unless the applicant modifies the proposed special event to satisfactorily deal with these concerns in a manner reasonably acceptable to the police chief or his designee.

9. A special event permit application requiring police protection for public safety shall be denied if the application requests the conducting of a special event at the same time as another special event requiring police protection that is being conducted in a different vicinity at a different geographical location and the additional diversion of police protection would deny reasonable police protection to the city.

10. A special event permit application shall be denied if it would require such a substantial amount of police protection for public safety that it would deny reasonable police protection to the remainder of the city, even when additional off-duty police officers would be employed on an overtime basis.

11. A special event permit application shall be denied if the request is for a time and location where a special event or street excavation or construction project has already been scheduled for that time and location and an irreconcilable conflict exists between the two so that they could not reasonably be conducted at the same time and location.

12. A special event permit application shall be denied if it would be:

    a. Obscene pursuant to Montana state law; or

    b. Hazardous to public health or safety; or

    c. Would create an extraordinary amount of litter and the applicant has not presented an acceptable, effective plan for the applicant to clean up the litter immediately after the conclusion of the special event; or

    d. Would substantially interfere with emergency ambulance, fire or police service and the applicant fails to modify the application request to satisfactorily alleviate or eliminate this interference with emergency services.

13. When such an event will be an exercise of political and religious rights protected by the First and Fourteenth Amendments to the United States Constitution, the application shall be processed promptly, without requiring liability insurance.

14. Spontaneous special events in response to political and public controversies may not be denied a special event permit.

C. An applicant desiring to appeal any denial of a permit application may immediately appeal to the mayor, or in the mayor's absence, the city council president, or in the city council president's absence, the city council vice president. A decision on any appeal must be issued within twenty-four hours after the appeal is submitted.
(Ord. 3492, 2013; Ord. 3464, 2011; Ord. 3242, 2003; Ord. 3135; Ord. 2648 (part), 1989).

12.58.035 Special event permit – Fee

The fee for a special event permit is) one hundred forty five dollars ($145.00) per event. This fee applies to all events that conduct a special event within a public sidewalk, street, sidewalk or public right-of-way. The permit fee is waived for special events conducted under 12.58.030 (B) (13) and (14) and 12.58.090.

(Ord. 3503 §1, 2013; Ord. 3479, 2012; Ord. 3464, 2011)

12.58.040 Duties of the permittee/sponsor. The permittee shall comply with all permit conditions and directions and with all applicable laws and ordinances. The permittee, sponsor or other person leading or directing the special event shall carry a copy of the permit upon his/her person during the conducting of the event and if not available at the site designate another individual to be present and have possession of a copy of the permit at the site. (Ord. 3135, 2000; Ord. 2648 (part), 1989).

12.58.050 Public conduct during special events.

A. The following types of public conduct shall not be allowed during a special event:

1. Any person unreasonably hampering, obstructing, impeding or interfering with the reasonable conduct of any special event;

2. Any driver of any vehicle driving between the vehicles or persons comprising any parade, assembly or similar activity when such vehicles or persons are conspicuously engaged in a parade, assembly or similar activity, provided that this provision shall not apply to authorized emergency vehicles such as police, fire, ambulance and service vehicles which may be engaged in an emergency situation;

2. Participants in any parade, march or procession, whether driving, riding or walking, shall not consume, use, display or be under the influence of alcohol or illegal drugs which violate any law or ordinance;

3. No participant in a parade or procession shall throw, cast or drop candy, trinkets or any other articles to the people along the parade route but may walk along the side edges of the parade route and hand out these items.

B. The chief of police shall have the authority to prohibit or restrict parking of vehicles along any street constituting the route of a parade or procession and in any street proximately located to the site of a special event when such parking restrictions or prohibitions are necessary to the safe conduct of the activity. The chief of police shall order the posting of signs and/or barricades to such effect and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof except emergency or service vehicles engaged in an emergency situation. Further, if any street is entirely closed off for the purpose of conducting a special event, other than a parade, within the closed street the organizer or sponsor of the special event shall have the responsibility of providing street barricades and signs informing the public of the street closure. The placement of signs and barricades for all special events located within the city right-of-way shall be approved by Development Services staff. Barricades and signs shall be used that comply with the Manual on Uniform Traffic Control Devices (MUTCD). (Ord. 3492, 2013; Ord. 3135, 2000; Ord. 2648 (part), 1989).

12.58.060 Revocation of special events permit. All permits issued pursuant to this chapter are without advance notice, subject to revocation for cause at any time by the chief of police or other police official in charge whenever the public interest, general welfare, health and safety would be best served by revocation for cause. The chief of police or other police official in charge upon revoking a permit may require the participants and spectators to disperse whenever the permittee is failing to satisfy the conditions and/or obligations under the permit or whenever there is imminent danger of public disturbance or disorder. (Ord. 3135, 2000; Ord. 2648 (part), 1989) .

12.58.070 Violation--Penalty. Any person who shall be guilty of any provision of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars and not more than five hundred dollars. There shall be no penalty of imprisonment for a violation of any provisions of this chapter. (Ord. 3135, 2000; Ord. 2648 (part), 1989).

12.58.080 Hold harmless and indemnification. Applicants for a special event permit shall agree in writing to defend, hold the city and its employees harmless and indemnify the city for any and all claims, lawsuits or liability including attorneys' fees and costs allegedly arising out of loss, damage or injury to person or person's property occurring during the course of or pertaining to the special event caused by the conduct of employees or agents of applicants. (Ord. 3135, 2000; Ord. 2648 (part), 1989).

12.58.090 Temporary street or alley closures for residential block parties. Residential block parties may be authorized by the mayor in consultation with Police, Fire and Development Services departments at residential locations not involving closure of any arterial or collector streets and during hours between 8:00 a.m. and 9:00 p.m. approved by the mayor subject to the following conditions:

A. All abutting or adjacent property owners as well as the property owners on the corner lots immediately across the intersection on the opposite side of the street closure shall be contacted and have the opportunity to voice concerns to the applicant and the city;

B. The applicant for any special event must have an approved traffic control plan and shall be solely responsible for obtaining, placing and removing any required barricades or traffic control devices;

C. The applicant or sponsors of the event to the extent reasonably possible shall provide liability insurance protecting themselves as well as naming the city as an additional insured;

D. Comply with any conditions imposed by the city police, fire or Development Services departments.

E. The applicant must agree to defend, indemnify and hold harmless the city from any claims or lawsuits that arise out of the temporary street closure usage.

(Ord. 3492, 2013; Ord. 3464, 2011; Ord. 3135, 2000)

12.58.100 Exceptions. The mayor may grant exceptions to the provisions of Section 12.58.030 (B)(1) (pertaining to liability insurance requirement limits) and/or Section 12.58.030(B)(4) (pertaining to hours of event) taking into account the general public health, safety and welfare associated with the request for exception, as well as the liability risk and the applicant's ability to pay. When the mayor considers requests for exceptions, the mayor shall base the mayor's decision on the factual circumstances presented and decide the specific request on its merits and the mayor may not discriminate on the basis of actual or perceived (as defined in MMC 9.64.020) race, color, national origin, ancestry, religion, creed, political ideas, sex, age, marital or familial status, physical or mental disability, sexual orientation, or gender identity or expression, unless based on a bona fide liability risk, general welfare, health or safety reason(s). (Ord. 3428 §13, 2010; Ord. 3135, 2000)

Chapter 12.60

REGULATIONS GOVERNING CAMPING ON CITY RIGHT-OF-WAY AND OTHER CITY PROPERTY

Sections:

12.60.010 Definitions.
12.60.020 Camping on Public Streets in the City Limits.
12.60.030 Camping on City Property.
12.60.040 Designated Temporary Camping Sites and Safe Parking Sites.
12.60.050 Enforcement.
12.60.060 Annual Review of Urban Camping, Programs, and Regulations.

12.60.010 Definitions.
The following words, terms and phrases, when used in this Chapter, shall have the following meaning ascribed to them, except where the context clearly indicates a different meaning:

A. "Camping" or "camp" is defined as means to pitch, erect, create, use or occupy camp structures for the purpose of habitation.
B. "Camp structure" or "camp structures" is defined to mean a soft-sided structure intended to provide more than rudimentary protection from the elements such as tents.
C. "City property" means real property owned by the City of Missoula or an entity chartered, administered, or otherwise owned or operated by the City of Missoula.
D. "Unsheltered Individual" means an individual having no means to acquire one's own permanent or temporary housing; the availability of congregate shelter space does not qualify as shelter for the purposes of this provision.

E. “Vehicle” means any vehicle as defined in 10.02.390, MMC, including any motor home, camping trailer, tent trailer, truck camper, camper van, car camper, or other recreational vehicle with or without motive power designed for use as temporary living quarters.

(Ord. 3763, 2024; Ord. 3747, 2024)

12.60.020 Camping on Public Streets in the City Limits.

A. Camping Permitted Rules. An Unsheltered Individual may camp in a Vehicle on public streets in the City so long as they comply with the rules and requirements of this Chapter.

B. Vehicle Camping Permit. The City shall establish a permit system to regulate the use of public streets in the City for Vehicle camping. Upon application for a permit, City staff shall determine compliance with the Time and Place regulations set forth in subsection C. and D. The City shall actively monitor for compliance with the Manner regulations set forth in subsection E. The Mayor or their designee is authorized to adopt administrative rules concerning the permit process, and is additionally authorized to close certain public streets to camping, by posting of signs notifying the public of such prohibition, at the Mayor’s or designee’s sole discretion. The notice and posting rules of this Chapter do not apply to routine maintenance and repair of streets, surface transportation infrastructure, or public utility infrastructure, and may require Vehicle campers to move to a new location to allow the project to proceed.

C. Vehicle Camping Time Regulations. Permits for camping in a Vehicle on public streets in the City shall be issued for a period not to exceed 30 days. In the event that the Manner regulations of subsection E. are complied with, the permit may be reissued for up to two additional 30-day periods. In no event shall a Vehicle camping on a public street be located on the same named street for more than 90 days. Regardless of whether the permitted Vehicle has moved through the course of this period, after ninety days the Vehicle may not occupy that named street and must move to a different named street.

D. Vehicle Camping Place Regulations. Where feasible, up to two Vehicles may be permitted on a block. No more than three Vehicles used for camping purposes per quarter mile of public street. An Unsheltered Individual camping in a Vehicle public streets in the City shall not camp:

1. Adjacent to or immediately across from any parcel or lot containing a residential dwelling.
2. Within 100 feet of a public entrance of any commercial business or non-profit organization.
3. Within 300 feet of (approximately the length of a City block) of any shelter facility (e.g. those providing shelter to unhoused populations, victims of domestic violence, transitional housing, etc…).
4. Adjacent to or immediately across from the boundary of any public park.
5. Adjacent to or immediately across from any parcel or lot containing any public or private school, including secondary, elementary, or preschool, or any lot or parcel containing a daycare.
6. In violation of any posted parking signs or painted curbs prohibiting parking or otherwise limiting the hours of parking.
7. In a bike lane; median; sidewalk; public pathway or trail.

E. Vehicle Camping Manner Regulations.

1. The immediate area surrounding the Vehicle being used for camping on public streets in the City must be maintained in a clean and orderly manner. A clean and orderly manner includes, but is not limited to, all waste, debris and trash being in a container. Personal items, when not actively being used, must be stored inside the Vehicle.
2. No waste, sewage, debris, trash, personal items, or additional vehicles or trailers may be discarded or stored in the right of way, except as outlined in 4, below. Pet waste must be properly disposed of and pets must be leashed.
3. No fires are permitted within the public right-of-way.
4. Generators must be stored and located on a paved surface. Fuel must be in containers designed for the fuel stored therein.
5. Camping within the paved surface of a street may only be done in a Vehicle. Camping on the paved surface of any street in a tent, tarp, or in only sleeping bags, blankets, or other rudimentary forms of protection from the elements, is prohibited.
6. No structures may be built or maintained on the public right-of-way pursuant to Title 12, MMC.

(Ord. 3763, 2024; Ord. 3747, 2024)

12.60.030 Camping on City Property

A. Regulated Camping on City Property Allowed. An Unsheltered Individual may camp in a camp structure on City property open to general public use so long as they comply with the rules and requirements of this Chapter. The rules of this Section only apply to camping on City property, and do not apply to the mere act of sitting, lying or sleeping on City property where such activity is done for limited periods and not involving a camp structure.

B. City to Help Coordinate Supportive Programs with Service Providers and Willing Partners. The City will continue to coordinate, collaborate and communicate with service providers and willing community partners regarding programs to address the needs of Homeless Individuals without Access to Shelter. The City may work with willing service providers and partners to (1) provide lockers/small storage spaces that may be assigned to such individuals; (2) provide for trash collection services in areas used by such individuals; (3) provide for permanent or temporary bathrooms for use by such individuals; and (4) coordinate with service providers other similar services or support to allow clean, safe, and sanitary camping on City property. City Staff shall periodically provide a report to the City Council concerning this program and engagement with the service providers. The City shall distribute an urban camping resource guide, detailing locations for trash disposal, storage facilities, sharps disposal, public facilities, and a list of resources and services available in Missoula.

C. Rules Governing Camping on City Property. An Unsheltered Individual camping on City property must comply with the following time, place and manner regulations:

1. *Time*: An Unsheltered Individual may camp between the hours of 8 p.m. and 8 a.m. After 8 a.m., an Unsheltered Individual must dismantle the camp structure and remove all personal property and camp structures from the camp site until 8 p.m. From the period starting on November 1 through March 1, these hours shall be modified to allow an Unsheltered Individual to camp between the hours of 6:00 p.m. and 8:00 a.m.
2. *Place*: No camping in camp structures on City property is permitted, regardless of the availability of shelter space, in the following locations:

a. Within 100 feet (approximately the length of a regulation basketball court) of a structure containing a residential dwelling unit (as defined by the 2021 International Building Code, as amended and adopted by the Montana Department of Labor and Industry).
b. Within 100 feet of a public entrance of any commercial business or non-profit organization.
c. Within 300 feet (approximately the length of a standard City block) of any parcel or lot containing any public or private school, including secondary, elementary, or preschool, or any lot or parcel containing a daycare.
d. Within 300 feet of any shelter facility (e.g. those providing shelter to unhoused populations, victims of domestic violence, transitional housing, etc…)
e. Within 300 feet of an area designated by the Mayor as safe parking sites or designated temporary camping sites.
f. Within conservations lands regulated by Chapter 12.40.
g. Within City parks regulated by Chapter 12.40.
h. On or within 10 feet of a bike lane, public pathway, trail, or trailhead, or so as to block free passage on a sidewalk (sidewalks must have six feet of clear, unobstructed space).
i. Within 50 feet of the high water mark for the Clark Fork River, Bitterroot River, Rattlesnake Creek, or Grant Creek, including any side channels or backwaters thereof, where those waterways are located within City limits.
j. Areas temporarily or permanently signed or designated on the City's urban camping webpage as no camping due to environmental degradation or because of public health, safety and or welfare concerns.

3. *Manner*: An Unsheltered Individual camping or utilizing a camp structure on City property (for the purposes of this subsection referred to as "campers") shall abide by the requirements of this subsection. Failure to abide by the affirmative requirements outlined below shall be a violation enforceable as laid out in this Chapter.

a. Campers must maintain access to private property or businesses, leaving entrances/exits unobstructed.
b. Campers must keep property clean, sanitary and safe, and thus must properly dispose of all garbage, debris, unsanitary or hazardous materials, sewage, drug paraphernalia, syringes, or other evidence of conspicuous drug use in accordance with the provisions of Chapter 8.28. Personal items, when not actively being used, must be stored inside a camp structure. Pet waste must be properly disposed of and pets must be leashed.
c. Campers shall not start or maintain any fire for the purpose of burning any combustible material. CSA or ULC approved portable camp cooking stoves that have a maximum flame length not exceeding 15 cm are allowed and not considered prohibited fires. d. Campers shall not camp within the paved boundaries of a street.
e. Campers shall only use camp structures that are readily and easily portable, such as tents and similar packable structures; and shall not erect, install, place, leave or set up any type of permanent or temporary fixture or structure (for example wood or pallet structures) in or upon City property.
f. Campers must protect sensitive environmental areas, for example by: (1) not dumping or disposing of waste or garbage in rivers, ponds, waterways or wetlands; (2) not damaging vegetation/trees or infrastructure; and (3) not digging, excavating, terracing soil, cutting vegetation/trees, altering the ground or infrastructure or other cause environmental damage in or around a camp structure.

(Ord. 3763, 2024; Ord. 3747, 2024)

12.60.040 Designated Temporary Camping Sites and Safe Parking Sites

A. City to Permit Designating Camping/Parking Sites. The City may permit camping sites and safe parking sites on City property or on private property where the owner of the property is voluntarily willing to allow use of their property under agreed upon terms and conditions enforceable by the City. City Council may approve the permit if it is deemed feasible, practicable, and in the public interest. If a service provider organization is willing to operate a permitted designated camping or parking site, the City may make City-owned parcels available to that organization to operate such a site or sites if the City and the organization agree on program terms and conditions. If a service provider organization is willing to operate a designated camping or parking site, the City may make City-owned parcels available to that organization to operate such a site or sites if the City and the organization agree on program terms and conditions.
B. Rules for Temporary Camping Sites. In the event a temporary camping site is located on City property, no more than 30 camp spots may be located within each site. Individual camp spots should be no more than 10'x10' in

size. The City shall provide bike racks for bikes, so that they will not be stored within the camp spot. The camp shall have a central cook space, so that cooking does not occur within a camp spot. The City shall develop rules for the possession and storage of volatile chemicals (e.g. propane, gas, etc…). The Fire Department shall develop and post rules concerning the use of heat sources within the camping site. No open drug use or disruptive behavior shall be allowed within the camp site. The Mayor, or their designee, shall develop other rules of occupancy for the site, including quiet hours that run from at least 10:00pm to 7:00am.

C. Rules for Safe Parking Sites. The Mayor is authorized to make rules concerning safe parking sites either generally or based upon the circumstances of each site.

D. Agreements with Property Owners Authorized. The Mayor is authorized to execute agreements with private property owners to allow limited camping on private property where the owner of the property is voluntarily willing to allow use of their property for such purposes. Such agreements shall spell out the rules governing the use of the property for such a program, including a maximum number of occupants of a site, rules of occupancy for the site, as well as how campers will be selected for the site (e.g. owner's selection/designation; lottery; first come-first serve, etc…). The City shall enforce the terms of such agreements, including, when requested by the owner of their designated agent, the removal of individuals who violate the rules of occupancy.

(Ord. 3763, 2024; Ord. 3747, 2024)

12.60.050 Enforcement.

A. Policy Goal and Required Pre-Enforcement Actions. The City believes that enforcement of the rules applicable to an Unsheltered Individual is best achieved through a graduated response with enhanced resources and incentives provided before citations or judicial enforcement is pursued. The City believes that any enforcement action should compassionate and should attempt to minimize adverse impacts on the individuals subject to the enforcement to the extent feasible and practicable under the circumstances.
    1. *Site Assessment and Monitoring Process*. The City shall develop and implement a site assessment, monitoring, and prioritization process to evaluate sites to determine whether enforcement action is justified or whether monitoring and connecting to services may remediate the documented problems.
    2. *Required Outreach*. Before conducting an enforcement or abatement action against an individual a city official enforcing this Chapter must:
        i. Refer an Unsheltered Individual camping on City property or public streets to an available shelter facility or other available temporary housing;
        ii. [Repealed]
        iii. Provide information, in written or verbal format, concerning other available support services for individuals in the situation of the Unsheltered Individual creating the enforcement concern.

B. Violations.
    1. [Repealed]
    2. *Violations to Be Enforced as a Misdemeanor Offense*. Violations of this Chapter are a misdemeanor offense. If the City or private party incurs costs to remediate the area around an individual's camp structure due to violations of the Time, Place, and Manner requirements above, those costs may be imposed as restitution.
    3. *Deferred Imposition of Sentence*. The City shall offer a deferred imposition of sentence to an individual for their first citation issued to enforce the terms of this Chapter. If no further offenses under this Chapter occur for a period of six months after the deferred imposition of sentence is ordered, the first offense shall be dismissed.
    4. *Penalty Authorized*. Violations of this Chapter are a misdemeanor offense punishable by a $50 fine. Jail time is not an authorized penalty under this Chapter.

C. Abatement.
    1. *120-Hour Notice for Unsanitary or Unsafe Conditions on City Streets*. Except as provided in subsection 2 and 3 below, for violations necessitating abatement due to violations of the regulations set out in this Chapter or otherwise due to unsanitary or unsafe conditions, the City may abate or cause to be abated

any debris, trash, camp structure, property, or item left on City property or the public right-of-way by posting a 120-hour notice on or near the camp structure. After 120 hours, any property remaining will be considered abandoned. No notice is required to abate a violation posing an imminent risk to public health or safety.

2. *72-Hour Notice for Unsanitary or Unsafe Conditions on City Property (Not Including Streets)*. Except as provided in subsections 1 and 3 herein, for violations necessitating abatement due to violations of the regulations set out in this Chapter or otherwise due to unsanitary or unsafe conditions, the City may abate or cause to be abated any debris, trash, camp structure, property, or item left on City property (not including City streets) by posting a 72-hour notice on or near the camp structure. After 72 hours, any property remaining will be considered abandoned. No notice is required to abate a violation posing an imminent risk to public health or safety.
3. *24-Hour Notice for Violations of Time or Place Regulations*. The City may remove or cause to be removed any camp structure in violation of the Time or Place regulations after posting a 24-hour notice on or near the camp structure. After 24 hours, any property remaining will be considered abandoned. No notice shall be required if the camp structure is impeding or obstructing traffic or poses an imminent risk to public health or safety.
4. *Notice Contents.* Where notice is required prior to abatement, the notice shall contain information related to the regulation being violated, possible remedies that would resolve the need for abatement, and the timeframe to come into compliance. The notice shall also contain the following statement:

   > You must remove your belongings from the site within the timeframe stated on the notice. You should not leave behind any belongings you want to keep. All belongings left behind will be removed by the City. Items that are clearly discarded or valueless, hazardous, soiled, or subject to rotting or spoiling will be discarded. The City will store remaining personal property for a period of 30 days. The City will post an Impound Notice if belongings are stored during the clean-up process. If you think your belongings were stored, you can claim them by following the directions on the Impound Notice after the clean-up is complete. Information about how to claim your belongings is also available on the City's website. You may retrieve any stored belongings without being asked about your criminal background or outstanding warrants.

5. *Procedure During Abatement*. When shelter is available, the City shall provide shelter service information to any person occupying the area to be abated. The City shall evaluate reasonable requests for additional time or assistance to remove items and may accommodate those requests to the extent practicable. Any person who returns to an encampment during an abatement shall be allowed to remove their personal property from the site. The City shall document the abatement through photograph or video recording before the abatement begins and at the time of completion. The City shall also photograph or video record all items to be stored.
6. *Weather During Abatement*. Staff shall monitor the weather leading up to the event to determine whether there may be extreme weather events (such as extreme heat, cold, rain or snow) that could create health or safety risks to unhoused individuals or staff during the abatement event, and if such risks exist the abatement should be delayed until the event passes.
7. *Abandoned Personal Property*. Unclaimed or abandoned items found in an abatement site shall be eligible for storage if: circumstances indicate that the item belongs to a person, the item has apparent utility in its current condition and circumstances (i.e. the item is not damaged, deteriorating, or falling apart), and the item can be safely retrieved from the site.
   i. Examples of items potentially eligible for storage include identification and associated paperwork, medication stored in medication bottles with identifying information, and items that reasonably appear to have sentimental value in their current condition. An item need not be in a new or perfect condition to have apparent utility.
   ii. An eligible item found during an abatement shall be put into storage and be able to be reclaimed for a period of 30 days, unless it meets one the following disqualifying conditions:
      1. hazardous, including items contaminated with human waste, animal waste, or bugs, explosives, weapons, liquids, drug paraphernalia, or mold;

2. likely to become hazardous in storage, including perishables, wet materials that might become moldy, and items covered in mud;
3. practically un-storable, due to large size, weight, or other similar characteristic;
4. contraband or stolen; or
5. is on the City's current list, published on the City's website, of common types of items that, in the experience of City staff, individuals regularly abandon during abatement, and there is no contrary indication as to the specific item.

iii. The City shall place a notice of the location to claim stored items at the abatement site. A person may retrieve stored items based on a description with sufficient specificity to demonstrate ownership. A person may retrieve stored items without inquiry into the person's criminal background or outstanding warrants.

8. *Towing Vehicles; Costs*. In the event a Vehicle camp structure belonging to an Unsheltered Individual is towed and/or impounded by the city, no fees will be associated with the towing or impoundment; however any costs incurred by the City to cleanup public or private property surrounding the towed vehicular camp structure, due to accumulation of garbage and refuse around the vehicle, must be paid to the City before the vehicle is released. In the event the city tows or causes to be towed the same vehicular camp structure more than two (2) times due to violations of this Chapter, costs of towing and impoundment may be assessed.
9. *Rescheduled Abatements*. If abatement is delayed or rescheduled, the City may conduct abatement within seven days of the posted Notice of Clean-Up without reposting a new Notice of Clean-Up. If abatement is delayed longer than seven days, the City shall repost a Notice of Clean-Up with a new date.

D. Authority to Enforce.
1. *Citation Authority*. Citations for a violation of this Chapter may be issued and enforced by any city law enforcement officer.
2. *Abatement/Removal Authority*. Determinations regarding abatement or emergency removal without notice shall be made by the Director of Public Works, the Director of Parks and Recreation, or the Director of Community Planning, Development, and Innovation or their designee.

(Ord. 3763, 2024; Ord. 3747, 2024)

12.60.060 Annual Review of Urban Camping, Programs, and Regulations.
The City Council shall annually review the state of urban camping in the City, as well as the programs that support the Unsheltered Individuals who are urban camping in the City. Additionally, during this annual review, the City Council shall review the regulations that apply to urban camping, and determine whether to amend, repeal, or leave in place such regulations.
(Ord. 3763, 2024; Ord. 3747, 2024)